“In the Name of the Queen”:
Military Trials of Japanese War Criminals in the
Netherlands East Indies (1946-1949)

Fred L. Borch*

Abstract

After World War II, the colonial government in the Netherlands East Indies (NEI) prosecuted more than 1,000 Japanese nationals for war crimes committed against mostly Dutch and Indonesian citizens during the Japanese occupation of the NEI (1942-1945). This article examines the unique Dutch approach to prosecuting war crimes at so-called “Temporary Courts-Martial,” including the applicable rules governing evidence, jurisdiction, and punishment. It also looks at representative war crimes trials by offense and analyzes death and non-death sentences imposed by the tribunals. Finally, it offers some overall conclusions about these trials in military legal history.

From 1946 to 1949, the Dutch prosecuted—in the name of their sovereign, Queen Wilhelmina—more than 1,000 Japanese soldiers, sailors, and civilians for war crimes they had committed in the Netherlands East Indies (NEI) during World War II. Although some Dutch scholars writing in their own language have examined this event, there has never been any comprehensive examination

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Fred L. Borch is the Regimental Historian and Archivist for the Army Judge Advocate General’s Corps. He served 25 years active duty as an Army lawyer before retiring in 2005. He holds B.A. and M.A. degrees in history, a J.D. and two Masters of Law degrees, and an M.A. in National Security Studies. His area of expertise is military legal history. Borch currently serves on the Faculty & Staff of the Judge Advocate General’s School in Charlottesville, Virginia.

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by an English-language historian of the nearly 450 “temporary courts-martial” convened to hear evidence of Japanese wartime atrocities in the archipelago known today as Indonesia.¹

With the goal of bringing this unique episode in military legal history to a wider—and non-Dutch speaking—audience, this article looks at a select number of records of trial from war crimes prosecutions conducted in various locations in the NEI. Although the focus is on those trials in which the death penalty was imposed (roughly 25 percent of the Japanese convicted were hanged for their crimes), a number of non-capital cases also are analyzed, chiefly because these cases either broke new ground in international law (e.g. concluding that enforced prostitution is a war crime) or because they provide a context for understanding why the death penalty was imposed at the conclusion of some trials and not in others, or both.²

The overarching theme of this article is that the war crimes prosecutions conducted in the NEI after the Second World War are unique in military legal history. First, the Dutch took a radically different approach when they created the legal system for trying the Japanese, in that they departed from their civil law tradition and decided instead to use customary law as the basis for war crimes prosecutions. Second, alone among the Allies, the NEI government established sentencing guidelines that restricted the punishments that could be imposed on those convicted of war crimes. Third, the Dutch worked hard to preempt claims by critics that the NEI trials were “victor’s justice” or “kangaroo courts,” by requiring the officer sitting in judgment to disclose the reasons for the verdict along with a statement explaining why a particular punishment was imposed. Consequently, while decisions handed down by American or British war crimes tribunals failed to reveal the basis for a finding of guilty, much less the rationale underlying a particular punishment (because this was not required), each of the 1,038 Japanese military or naval personnel convicted in the NEI was able to examine the evidentiary basis for his conviction and punishment. This transparency added legitimacy to the entire process. It also helped the accused when he petitioned for clemency or a pardon, since he could identify (and rebut, where appropriate)

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1. Other than a handful of cases (translated from Dutch into English) appearing in the Law Reports of Trials of War Criminals (London: United Nations War Crimes Commission, 1947), there appear to be only two other English-language sources on Dutch war crimes operations in the Far East. The oldest is Phillip R. Piccigallo’s The Japanese on Trial: Allied War Crimes Operations in the East, 1945–1951 (Austin: University of Texas Press, 1979); it has ten pages on NEI war crimes tribunals. The other source is a ten-page entry in The Encyclopedia of Indonesia in the Pacific War (Leiden, Netherlands: Brill, 2010). Its author, Iris Heidebrink, provides a general overview of war crimes prosecutions.

2. This article examines only war crimes prosecutions of Japanese nationals; it does not look at the prosecutions of Dutch or NEI citizens for war crimes, including collaboration with the Japanese.
those facts and circumstances upon which the judges had based their decisions. Fourth (and finally), while some 25 percent of the Japanese tried by the Dutch were sentenced to the gallows, this study shows that these death sentences were not excessive when one considers the widespread and systematic, and vicious and sadistic nature of the war crimes committed by the Japanese during the occupation. On the contrary, some trials in which the death penalty might have seemed appropriate instead resulted in imprisonment. And there were acquittals which, at least on the face of it, suggests that the three-judge panels were not pre-disposed to find defendants guilty as charged.

This article begins with a brief examination of the Dutch presence in the NEI, including a discussion of the Japanese occupation of the islands from 1942 to 1945 and the radically altered landscape that the Dutch found when they returned to power in 1945. It then discusses the four NEI decrees creating the legal framework of the Dutch East Indies war crimes tribunals. Since the offenses prosecuted in Queen Wilhelmina’s name were a radical departure from both traditional Dutch law and also quite different in some respects from war crimes being prosecuted in other Allied courts in the Far East, this article takes a detailed look at offenses. The article also briefly analyzes the rules governing evidence, jurisdiction, and punishment, followed by some observations on how Japanese defendants were selected for prosecution, and related problems. This article next looks at representative courts-martial—not case-by-case, but rather by offense. Next is a discussion of the best explanation for why Japanese war crimes were so widespread and systematic, and so vicious and cruel, which provides a context for understanding the follow-on discussion of capital and non-capital sentences imposed by the temporary courts-martial. Finally, this article briefly comments on the “aftermath” of the war crimes prosecutions in the NEI and offers some overall conclusions about these trials in military legal history.

The Dutch in the Netherlands East Indies

If the British considered India to be the “jewel in the crown,” and indeed, their Imperial Defense was structured around protecting the commerce between India and the United Kingdom, then the Dutch East Indies must be seen as almost the entire jeweled headdress that Queen Wilhelmina and her predecessors would have worn as sovereigns of the Netherlands.3 After all, at 733,000 square miles, the NEI was almost fifty times larger than the 15,000 square mile Kingdom of the Netherlands. More importantly, the rich raw materials in the archipelago—oil, rubber, tin, bauxite, nickel, and manganese—made it a critical part of the Netherlands economy. In oil production alone, the NEI ranked fifth in the world in 1940.4

3. Queen Wilhelmina (1880–1962) reigned from 1890 to 1948, longer than any other Dutch monarch. She abdicated in favor of her daughter, Juliana, in 1948.
The Dutch first arrived in the archipelago in the late 1500s and, by the early 1600s, the privately owned United East India Company (VOC) was firmly established in Batavia on the island of Java. The Netherlands government took formal control of the East Indies after the VOC declared bankruptcy in 1796. It was not until the early twentieth century, however, that Dutch colonial authorities were able to finally defeat various insurgencies and achieve a measure of peace and stability in the NEI.

While relatively few Dutch nationals lived in the NEI prior to 1870 (there were only a few thousand Europeans living in the islands, most of whom were soldiers), the Dutch population in the colony increased rapidly in the years that followed. By 1940, there were 300,000 Dutch nationals (of whom 200,000 were Eurasians), living in the archipelago. These colonials, however, were relatively few in number when compared with the 68 million Indonesians (including 47 million on the islands of Java and Madura alone), 1.25 million Chinese, 50,000 Arabs, and 20,000 Malays also residing in the NEI. But, when compared with the U.S. presence in the Philippines and the various British colonies in the Far East, the NEI was unique: no other Western colony occupied by Japan during World War II had so many “enemy” aliens.5

The beginning of the end for the Dutch in the East Indies began on the night of 10–11 January 1942, when Japanese units landed on Tarakan (an island off northeast Borneo) to seize oil installations there. Less than two months later, on 9 March, NEI forces on Java surrendered; the last major NEI units (located on Sumatra and Aceh) capitulated on 28 March 1942.6 The occupation that


followed lasted until late August 1945 when, following Japan’s surrender, Dutch troops landed in the NEI and formally re-took control of the colony. But too much had occurred in the interim: the Japanese had dismantled the colonial government, placed virtually the entire white population in concentration camps, and encouraged Indonesian nationalists in their aspirations for independence from the Dutch. As a result, when the Dutch sought to reestablish their authority in the NEI after the Second World War, they found themselves embroiled in an ever-widening guerrilla war led by the Indonesian nationalist leader Sukarno, who had declared the independence of the Republic of Indonesia on 17 August 1945. Despite a major effort to defeat the insurgency and retain their colony in the Far East—eventually the Dutch would have 100,000 troops on Java alone—the Dutch failed in their re-colonization efforts. The Netherlands acknowledged the independence of the Republic of Indonesia on 27 December 1949. Until that day, however, NEI authorities vigorously pursued Japanese soldiers, sailors, and civilians who had committed war crimes during the occupation and prosecuted the offenders at temporary courts-martial. A discussion of the legal framework for those war crimes tribunals follows.


At the end of World War II, teams of investigators working for the United Nations War Crimes Commission began gathering evidence of war crimes committed by the Axis powers. While international tribunals in Nuremberg and Tokyo heard evidence against high-level political and military leaders who had carried out “crimes against peace” and “crimes against humanity” (so called “Class A” war criminals), the Allies left it up to national courts to prosecute those Germans, Italians, and Japanese (and associated nationals) who had committed “minor” war crimes (and were labeled “Class B” or “Class C” war criminals).7

For war crimes committed in the Far East, the Allies convened military tribunals in a variety of locations. The United States convened war crimes courts in Yokohama, Manila, and Shanghai, and on the islands of Kwajalein and Guam. The British held trials in Singapore, Malaya, North Borneo, Burma, and Hong Kong. In Saigon, French authorities prosecuted 230 individuals for war crimes and the Australians held war crimes courts in eight locations, including Darwin, Morotai (Netherlands East Indies), and Singapore. After achieving independence on 4 July 1946, the Philippines utilized military commissions to prosecute Japanese war

criminals in Manila. Soviet and Nationalist Chinese officials also prosecuted both military personnel and civilians for war crimes.8

As for the Dutch, authorities in the newly liberated NEI were adamant about prosecuting Japanese war criminals in their custody for the horrific war crimes committed against inhabitants of the colony. From 6 March 1946, when a “provisional” or “temporary” court-martial in Batavia began hearing evidence of war crimes until the last trial on NEI soil was completed on 24 December 1949, NEI authorities convened 448 courts in which a total of 1,038 Japanese were tried.9 As Table 1 shows, only the United States tried more war criminals than the Dutch in the Far East.10

Table 1: War Crimes Trials in the Far East (1945–1951)

<table>
<thead>
<tr>
<th>Country</th>
<th>Accused</th>
<th>Trials</th>
<th>Not Guilty</th>
<th>Death</th>
<th>Life</th>
<th>Prison Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.</td>
<td>1453</td>
<td>456</td>
<td>188</td>
<td>143</td>
<td>162</td>
<td>871</td>
</tr>
<tr>
<td>N.E.I.</td>
<td>1038</td>
<td>448</td>
<td>55</td>
<td>236</td>
<td>28</td>
<td>705</td>
</tr>
<tr>
<td>U.K.</td>
<td>978</td>
<td>330</td>
<td>116</td>
<td>223</td>
<td>54</td>
<td>502</td>
</tr>
<tr>
<td>Australia</td>
<td>949</td>
<td>294</td>
<td>267</td>
<td>153</td>
<td>38</td>
<td>455</td>
</tr>
<tr>
<td>China</td>
<td>883</td>
<td>605</td>
<td>350</td>
<td>149</td>
<td>83</td>
<td>272</td>
</tr>
<tr>
<td>France</td>
<td>230</td>
<td>39</td>
<td>31</td>
<td>63</td>
<td>23</td>
<td>112</td>
</tr>
<tr>
<td>Philippines</td>
<td>169</td>
<td>72</td>
<td>11</td>
<td>17</td>
<td>87</td>
<td>27</td>
</tr>
</tbody>
</table>

The largest number of trials in the NEI were held in Batavia (today's Djakarta) which, as the seat of the colonial government and headquarters of

8. For a general (and unique) study of Allied prosecutions in the Far East, see Piccigallo, The Japanese on Trial.


10. Peter Post, William H. Frederick, Iris Heidebrink, and Shigeru Sato, eds., Encyclopedia of Indonesia in the Pacific War (Boston: Brill, 2010), 409. In his authoritative Military Tribunals and International Crimes (Indianapolis: Bobbs-Merrill, 1954), John A. Appleman gives slightly different numbers, but statistical data were incomplete when Appleman's book was first published. No reliable data exist on the military war crimes trials conducted by the Soviet Union in the Far East after World War II.
the Government Office for Tracing War Crimes,\textsuperscript{11} was the most logical site for judicial proceedings. But temporary courts-martial also were held in eleven other locations in the archipelago: Ambon, Balikpapan, Banjarmasin, Hollandia, Kupang, Makassar, Manado, Medan, Morotai, Pontianak, and Tanjung Pinang. The accompanying map of the NEI shows the archipelago and some trial locations (e.g. Batavia [Djakarta], Makassar). Table 2 shows the number of accuseds, trials, and results in Batavia and other locations. While data for some categories and locations are incomplete, Table 2 does show that the majority of the defendants were prosecuted in Batavia (374 of 1,038).\textsuperscript{12}

\begin{table}[h]
\centering
\caption{Temporary Courts-Martial in the Netherlands East Indies (1946–1949)}
\begin{tabular}{|l|c|c|c|c|c|c|c|}
\hline
Location & Accused & Cases & Guilty & Not Guilty & Death & Life & Prison \\
\hline
\hline
Balikpapan & 88 & 28 & ? & 1 & 26 & 1 & ? \\
\hline
\hline
Batavia (Djakarta) & 374 & 136 & 354 & 20 & 64 & 1 & 289 \\
\hline
Hollandia & 57 & 53 & 54 & 3 & 9 & 1 & 44 \\
\hline
Kupang (West Timor) & 24 & 15 & 23 & 1 & 5 & - & 18 \\
\hline
Makassar & 90 & 29 & ? & 4 & 36 & 5 & ? \\
\hline
\hline
Medan & 133 & 49 & ? & 1 & 15 & 2 & ? \\
\hline
\hline
Pontianak & 28 & 20 & 28 & - & 10 & 1 & 17 \\
\hline
Tanjung Pinang & 11 & 6 & 11 & - & 1 & 1 & 9 \\
\hline
\end{tabular}
\end{table}

\textsuperscript{11}The Government Office for Tracing War Crimes (Dutch: \textit{Regeringsbureau voor Opspor- ing van Oorlogsmisdrijven}) was responsible for gathering evidence of war crimes committed by the Japanese against NEI and other Allied nationals and, on the basis of that evidence, recommending individual soldiers, sailors, and civilians for trial.

In creating the legal framework for war crimes tribunals convened in the NEI between 1946 and 1949, Dutch colonial authorities departed radically from both tradition and existing jurisprudence. The NEI—like the Netherlands and the vast majority of countries—was a civil law jurisdiction, and had been since the Napoleonic era. Under its civil law framework, codes and statutes were written in such detail that they covered as many eventualities as possible. This meant that lawyering in the NEI was chiefly about interpreting statutes and that judges had a limited role in applying the law to a particular case and, in fact, acted more as investigators. (This civil law system stands in contrast to the common law framework used in the United Kingdom, the United States, and other former English colonies like Australia, Canada, and India, because the common law developed not from codes and statutes but from the customary practice of law before judges. Consequently, while cases decided by judges in a civil law system are not binding (but may be considered as guidance), judges in common law systems act as arbiters between the parties in a proceeding and their decisions become precedent binding on future cases.)

The radical break from tradition was the decision by NEI officials to make war crimes independent of existing written NEI criminal law. Consequently, while war crimes prosecutions being conducted by Dutch officials in the Netherlands relied upon existing Dutch penal law provisions when charging individual Nazis (and their associates) for war crimes committed in Holland, NEI authorities instead looked to “the laws and customs of war” for prosecutable offenses. Given that Dutch lawyers—then and now—practice law in a civil law framework, one might have expected the NEI to follow the lead of Dutch authorities in Europe and look to the existing penal code for offenses. But they did not.13 That is, while American, British, and Commonwealth prosecutors, schooled in the common law, were comfortable in looking to customary law in selecting offenses for prosecution as war crimes, this was something very new for NEI jurists. So why did the NEI adopt this novel approach?

There were at least three reasons. First and most importantly, adopting offenses from the laws and customs of war provided extraordinary charging flexibility to prosecutors. There was, for example, no existing NEI criminal statute that covered “intentionally withholding medicines and medical help to POWs” or “unlawful executions” or “imposition of collective punishment.” But these crimes could be charged as a violation of customary law, as occurred in Prosecutor v. Shigeyoshi YAMANE,14 Prosecutor v. Hidezo KANAMARU,15 and Prosecutor v. Yukiiie FUKUI,16 respectively. Similarly, while a Japanese soldier who killed an alleged spy could have

been prosecuted for murder under the existing NEI penal code, the Dutch prosecutor who charged him with “carrying out an [unlawful] execution in an inhuman manner” was able to charge an offense that better described the misconduct.17

The second (and complementary) reason for adopting customary international law in charging offenses was that customary law better described the systematic and widespread nature of Japanese criminal conduct. The existing NEI criminal code was designed to punish civilians committing criminal acts on a relatively infrequent basis; this civilian legislation was not equipped to handle the repeated criminal acts of Japanese nationals during the occupation, especially the widespread group misconduct of the Kempeitai and Tokkeitai, the Japanese military police and special naval police, respectively (discussed below). It follows that if “ordinary” criminal charges were not sufficient to cover crimes committed by the Japanese, it made sense to describe the misconduct as war crimes under customary law.

Third, and finally, by adopting the approach to war crimes prosecutions used by the United States, Australia, and the United Kingdom, the Dutch ensured that their war crimes prosecutions were synchronized with other on-going war crimes prosecutions in the Pacific. Since the Australians, Americans, British, and Dutch investigators worked in concert in gathering evidence of Japanese war crimes, it was helpful for these investigators in building cases for the same type of offenses. An additional advantage was that, as other Allied military tribunals developed case law in the course of their respective war crimes prosecutions, NEI tribunals could adopt precedent originating in these other courts.18

Having decided to break with tradition, NEI Statute Book (Dutch: Staatsblad) Decree Nos. 44, 45, 46, and 74 (1946) created the novel legal framework for the war crimes tribunals. Decree No. 44, “Definition of War Crimes Decree,” defined war crimes as those “acts which constitute a violation of the laws and usages of war committed in time of war by subjects of an enemy power or by foreigners in the service of the enemy” (emphasis supplied). Since this decree defined war crimes solely as violations of the customs and laws of war, it would seem that a three-officer panel trying Japanese defendants was prohibited from looking to NEI law for any guidance but instead must decide guilt or innocence solely on the basis of international law as defined in Decree No. 44 itself. In practice, however, there was some flexibility.19 Note also that the plain language of the provision meant

18. Since Dutch law (like that of the United States and most other countries) prohibits punishment for an act unless committing that act was a crime prior to its commission, one might think that adopting customary law as the basis for prosecuting war crimes would avoid any ex post facto issue—and be a fourth reason for the NEI government’s decision to adopt customary international law. There was, however, no need for NEI prosecutors to worry about ex post facto issues, since they could have done what the Dutch government did in Holland: in order to prosecute German and other nationals for novel war crimes (e.g. crimes against humanity), the Dutch enacted an “extraordinary penal decree” that suspended the ex post facto principle. Law Reports of the Trials of War Criminals, vol. 11, Annex, 86–87.
19. An official “Explanation” (No. 15031, 1946) published by the NEI Governor-General
that temporary courts-martial had no jurisdiction over Dutch citizens who had committed war crimes.

Decree No. 44 also expressly adopted the list of war crimes identified as “violations of the laws and usages of war” by the 1944 United Nations War Crimes Commission.\(^\text{20}\) This meant that the Japanese (and those foreigners in their employ or acting on their behalf) could be prosecuted for:

- Murder and massacres
- Systematic terrorism
- Putting hostages to death
- Torture of civilians
- Deliberate starvation of civilians
- Rape
- Abduction of girls and women for the purpose of enforced prostitution
- Deportation of civilians
- Internment of civilians under inhuman conditions
- Forced labor of civilians in connection with the military operations of the enemy
- Usurpation of sovereignty during military occupation
- Compulsory enlistment of soldiers among the inhabitants of occupied territory
- Attempts to denationalize the inhabitants of an occupied territory
- Pillage
- Confiscation of property
- Exaction of illegitimate or of exorbitant contributions and requisitions
- Debasement of the currency and issue of spurious currency
- Imposition of collective penalties
- Wanton devastation and destruction of property
- Deliberate bombardment of undefended places
- Wanton destruction of religious, charitable, educational, and historic buildings or monuments

provided “that general principles and rules of the Netherlands East Indies common penal law
were valid in the sphere of war crimes.” While this meant that temporary courts-martial could use these principles and rules in their decision-making, there was no requirement for the court members to refer back to existing NEI criminal law. It follows that the temporary courts-martial were free to rely solely on customary law, which meant great flexibility and freedom in arriving at a verdict and sentence.

20. This 1944 U.N. War Crimes Commission list of war crimes was based on the list of war-related offenses drawn up in 1919 by the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. This commission, part of the Paris Peace Conference, was tasked with identifying war crimes committed during World War I.
• Destruction of merchant ships and passenger vessels without warning and without provision for the safety of the passengers and crew
• Destruction of fishing boats and of relief ships
• Deliberate bombardment of hospitals
• Attacks on and destruction of hospital ships
• Breach of other rules relating to the Red Cross
• Use of deleterious and asphyxiating gases
• Use of explosive or expanding bullets and other inhuman appliances
• Directions to give no quarter
• Ill-treatment of wounded and prisoners of war
• Employment of prisoners of war on unauthorized works
• Misuse of flags of truce
• Poisoning of wells

The NEI government also added five more offenses to those identified as war crimes by the United Nations War Crimes Commission:
• Ill-treatment of interned civilians or prisoners
• Carrying out of or causing execution to be carried out in an inhuman way
• Refusal of aid or prevention of aid being given to shipwrecked persons
• Intentional withholding of medical supplies from civilians
• Commission, contrary to the conditions of a truce, of hostile acts or the incitement thereto, and the furnishing of others with information, the opportunity, or the means for that purpose

These additional five offenses were added for two reasons: the Japanese had committed these types of acts “repeatedly and on a large scale.”

In addition to the offenses listed in Decree No. 44, a unique provision in Decree No. 45, “War Crimes Penal Law Decree,” added one more offense: conspiracy. While conspiracy had been criminalized in Dutch law in 1886, it was limited to specific crimes against the state (such as conspiracy to overthrow the Kingdom of the Netherlands). Consequently, when NEI authorities added conspiracy to the list of offenses prosecutable as war crimes, this was an expansion of existing criminal law—and an arguably radical expansion in the sense that “conspiracy” had not previously been prosecuted as a “war crime” by any military tribunal. Yet Article 5 of Decree No. 45 states that “an attempt at or complicity and conspiracy in a war crime are equally punishable with the crime itself,” with conspiracy defined as an offense in which two or more persons have agreed to commit a crime.


22. Although the U.S. Supreme Court decided in Hamdan v. Rumsfeld (2006) that conspiracy was not a war crime, NEI officials believed otherwise when they promulgated Decree No. 45 in 1946.
Decree No. 45 also addressed four other important issues governing the operation of war crimes trials: the jurisdiction of temporary courts-martial; the issue of superior orders as a defense; permissible punishments; and, perhaps most importantly, a unique provision that permitted the prosecution of criminal groups.

Under Article 3 of Decree No. 45, the jurisdiction of temporary courts-martial was unlimited, in that any and all war crimes listed in Decree No. 44 could be prosecuted at temporary courts-martial regardless of where they occurred; the offense need not have occurred on NEI soil.

Decree No. 45 also stated that the defense of superior orders (i.e., the accused acted pursuant to the order of his superior in committing a war crime) did not apply to war crimes prosecutions in the NEI. Prior to World War II, the general rule in most military legal codes—including that of the United States—was that a soldier could not be punished for acts done under the orders of a superior. In the Dutch East Indies, this also was the rule. But Decree No. 45 made this rule “inoperative in the sphere of war crimes.”23 This removal of superior orders as a defense became critically important, as virtually every Japanese defendant who admitted committing a war crime insisted that he had only done so because ordered by a superior to commit the act. Additionally, to insure that a superior officer or non-commissioned officer did not escape criminal liability when a subordinate committed a war crime, Article 9 in Decree No. 45 further provided that:

He whose subordinate has committed a war crime shall be equally punishable for that war crime, if he has tolerated its commission by his subordinate whilst knowing, or at least must have reasonably supposed, that it was being or would be committed.24

Like the provision removing the defense of superior orders, this provision also became extremely important when more senior Japanese officers on trial at temporary courts-martial claimed ignorance of war crimes committed by their subordinates.25

As Phillip Piccigallo’s *The Japanese on Trial* notes, a major criticism of Allied prosecutions was that there was wide disparity in sentencing of Japanese war criminals because “no set rules or pattern for sentencing” existed and that military tribunals “therefore wielded sole discretion over the handing out of punishments.”26 The Dutch, however, alone among all the Allies, muted this criticism by creating a unique provision governing permissible punishments. Article 4 of Decree No. 45 provided that anyone found guilty of a war crime “shall be punished with the death penalty, or imprisonment for life, or imprisonment for not less than one day, and more than 20

24. Ibid., 100.
25. This provision was in line with developments in other Allied war crimes trials after World War II. For example, the five American members of the military commission that found General Tomoyuki Yamashita guilty of war crimes in December 1945 concluded that he was liable because he knew or “must have” known (and permitted) individuals and units under his command to commit “widespread, repeated, constant atrocities of the most violent character.” *Law Reports of Trials of War Criminals* (1948), vol. 4 (case no. 21), 1, 17.
years.” Consequently, while all other courts-martial and military commissions hearing war crimes in the Far East had complete discretion when it came to punishments, temporary courts-martial in the NEI were restricted when it came to sentencing (albeit having complete discretion in deciding which of these punishments to impose). Why a restriction on imprisonment? The most likely explanation is that NEI authorities decided as a matter of policy that they did not desire to have jail sentences that constituted a life sentence without being labeled as such. For example, if a temporary court-martial sentenced a war criminal to forty-five years in prison, was there any meaningful difference between that sentence and life imprisonment? Restricting the maximum sentence of confinement to twenty years also arguably forced the three members of the tribunal to reserve life imprisonment for only the most serious offenders. After all, as with the death sentence, the court members certainly realized that too many life sentences would be criticized as unduly harsh.

Finally, the most important provision in Decree No. 45 was Article 10, as it very much departed from existing international (and domestic) law in creating a special rule for criminal groups (collectieve aansprakelijkheid). It read, in part:

If a war crime is committed within the framework of the activities of a group of persons in such a way that the crime can be ascribed to that group as a whole, the crime shall be considered to have been committed by that group, and criminal proceedings taken against and sentences passed on all members of that group.

... No penalty shall be imposed on the member for whom it is proved that he had taken no part in the commission of the war crime.

No other war crimes tribunal operating in the Far East had such a provision (and no modern judicial system has ever accepted the idea of group or collective criminal liability), but the inhabitants of the East Indies had suffered so much from the actions of the Japanese Kempeitai military police and Tokkeitai special naval police that they regarded these as inherently criminal organizations akin to the Gestapo in Nazi Germany.

27. Note the difference between this NEI provision and Article 9 of the Nuremberg Charter. That article, which was applicable to the International Military Tribunal (IMT) in Nuremberg, addressed the trial of an individual member and provided that the IMT could declare, prior to that individual’s trial, that the accused was a member of a criminal group. Under Article 10 of Decree No. 45, however, there is no declaration of group criminality prior to the trial of the members of the group. More importantly, under the NEI provision a group could be prosecuted even if only a single war crime was committed once by the group, provided the war crime “can be ascribed to that group as a whole.” This is quite different from the “organizational criminality” attached to the Gestapo and SS. See Telford Taylor, Anatomy of the Nuremberg Trials (New York: Little, Brown & Co., 1992), 282.

28. Created in 1881, the Kempeitai was the Japanese Army’s military police but it had a Gestapo-like mission, too. A member of the Kempeitai was called a Kempei. Kempeitai is also spelled Kenpeitai; either spelling is correct.

29. Created in 1942, the Tokkeitai (the shortened form or abbreviated name of Tokubetsu-keisatsu-tai) was the Japanese Imperial Navy’s “Corps of Special Police.” During World War II,
The Dutch believed that the commission of war crimes was an integral part of the day-to-day operation of the Kempeitai and Tokkeitai. Since this meant that virtually every man who served in either group had participated in a war crime by virtue of his membership (i.e. members of the Kempeitai and Tokkeitai were a priori guilty of war crimes), the NEI authorities decided that it was both morally and legally appropriate to prosecute these organizations as criminal groups. Consequently, unless an individual defendant could prove that he had not been a full participant in the particular war crime(s) being prosecuted, he was guilty of a war crime by virtue of his membership in the Kempeitai or Tokkeitai.30 Since one-third of the 1,038 Japanese convicted by temporary courts-martial between 1946 and 1949 were either Kempeitai or Tokkeitai, this indicates the dim view that the NEI authorities took of these two military organizations.31

The principal reason for Article 10 was that permitting prosecution of a group ensured that no individual member of that group would escape responsibility for participation in what was essentially an organizational war crime—but where actual evidence of acts by specific individuals belonging to that group might be limited. It also was an effective and efficient use of judicial resources. By way of example, thirty-three Japanese Kempeitai members were prosecuted as a group in a single proceeding for torturing civilians and for systematic terror. The trial, which began in Batavia in February and finished in May 1947, resulted in all thirty-three soldiers being convicted. Their sentences, however, ranged from five years to death, depending on their participation in group war crime activities committed by the Kempeitai between April 1942 and September 1945.32 Similarly, ten Kempeitai members were tried as a group in Medan in late 1948 for systematic terrorism, torture of citizens, and mistreatment of POWs. All ten were convicted and received sentences ranging from eight years to death.33

Members of the Tokkeitai (the Japanese special naval police) likewise were prosecuted as a group in Banjarmasin for the torture and execution of some 200...
NEI civilians. There were a total of thirty defendants who were prosecuted in ten proceedings. All were convicted, but their sentences varied according to their status in the organization—with those in leadership roles receiving more severe punishment.

Finally, in Medan, a temporary court-martial prosecuted the 25th Army Headquarters as a criminal organization because of its systematic use of torture in POW camps and mistreatment of civilians on the east coast of Sumatra. As a result of this group prosecution, Lieutenant General Moritake TANABE, who commanded the 25th Army from April 1943 until the Japanese surrender, and Major General Nakao YAHAGI, who had served as Tanabe’s chief of staff, were found guilty and sentenced to death. Yahagi was hanged on 8 July 1949; Tanabe was executed three days later.34

As for trial procedure to be utilized at temporary courts-martial, Decrees No. 46 and 47 governed the configuration of the temporary court-martial, rules of evidence, the content of decisions, and review procedures.

Every Japanese defendant was prosecuted by a “temporary court-martial” (Dutch: temporaire krijgsraad) consisting of one president and two members, all of whom were military officers at least twenty-five years of age.35 The Governor-General appointed the members of the court; Allied officers also were eligible for membership, and they occasionally were appointed and served.36 The proceedings commenced with a formal charging document (akin to an indictment) and, after the accused had consulted with his defense counsel (all defendants were entitled to legally qualified counsel), the three-judge court-martial heard evidence presented by a prosecutor (Dutch: Auditeur Militair) as part of a “Verbal Process” (Dutch: Proces Verbaal). All documents, statements (written or oral), and other items presented by the prosecution to the three-member panel could be considered as “legal evidence” and the tribunal members were permitted to “ascribe to them such conclusive strength” as the members thought they possessed. But this flexible attitude toward evidence was the norm at war crimes trials. At U.S. military commissions, for example, any evidence that the commission considered to be “probative to a reasonable person” could be considered.37


35. There were three types of courts-martial under NEI law: ordinary, field general, and temporary. Ordinary courts-martial were the regular military tribunals, and consisted of a civilian lawyer (as president) and four officers; they routinely heard cases involving NEI military personnel. Field general courts-martial were established only in wartime, and consisted of a president and two members, all of whom were officers. These field general tribunals usually were appointed only to hear a specific case. Although ordinary and field general courts-martial had jurisdiction to hear war crimes cases, in practice only temporary courts-martial tried these offenses.

36. Piccigallo erroneously claimed that the senior member of the tribunal had to be a civilian lawyer. All members of a temporary court-martial were required to be military officers. De Groot, “De rechtspraak inzake oorlogsmsidrijven in Nederlands Indië (1947–1949),” 88. A British officer served on the temporary court-martial that tried Kenitji SONE in Batavia in August 1946 (see below).

37. President Franklin D. Roosevelt established this evidentiary standard when he appointed the military commission that tried the U-boat saboteurs in 1942. See Ex parte Quirin, 317 United States Reports 1 (1942).
After completing its “Verbal Process,” which might take a considerable period of time and require multiple court hearings, the panel then delivered its findings and sentence in an opinion or “case” (Dutch: Vonnis). Unlike U.S. military commissions, which did not disclose the basis for their decisions, NEI tribunals were required to state the rationale for their decisions by Article 79 of NEI Decree No. 74. That provision required “the reasons for the verdict and the description of the offense, together with a statement on the circumstances which … give rise to a severer or lighter punishment.”

The temporary court-martial could find an accused guilty only if it was “convinced by legal evidence that the act with which the accused was charged was committed by him.” While this is not equivalent to the “reasonable doubt” standard for a finding of guilty in U.S. law, it was the functional equivalent.38

While there was no appeal from the judgment of an NEI war crimes tribunal, the panel’s judgment was required to be presented to the commanding general of the geographic area in which the tribunal was sitting for his confirmation of the sentence.39 This “fiat of execution” (Dutch: fiat van executie) was the last step in the process, except that when the death penalty was imposed, the commanding general of the area was required to forward the case to the Governor-General in Batavia for his decision as to whether a pardon should be granted. If the accused petitioned for mercy, then the Governor-General was required to obtain an advisory opinion from the NEI Supreme Military Court (Dutch: Hoog Militair Gerechtshof). Ultimately, however, the Governor-General had the absolute authority to decide the case; the opinion of the Supreme Court was advisory only.

**Selecting Cases for Prosecution**

The decision to prosecute very much depended on whether the NEI authorities had a Japanese defendant in custody when temporary court-martial operations finally got underway in March 1946. Many of those Japanese soldiers and sailors who had committed war crimes as part of the conquest of the Indonesian archipelago between January and March 1942 (e.g. by unlawfully killing captured KNIL personnel or mistreating NEI civilians) had long since left the islands...
for other assignments and literally were beyond the reach of NEI authorities—if their identities even were known. In 1946, hundreds if not thousands of suspected war criminals likewise escaped prosecution when the British repatriated 300,000 Japanese citizens who were still located in the islands after Japan’s surrender. Shortly thereafter, with only superficial screening, another 30,000 Japanese soldiers and sailors were repatriated from Central Java to Japan. The 1,500 men who remained behind were suspected of having committed war crimes and they presumably would have been prosecuted by NEI authorities, except that about 500 were released to British authorities for prosecution in Singapore.41

Even when the NEI’s Government Office for the Tracing of War Crimes had a Japanese suspect in custody, identification was a problem. Unable to speak or understand Japanese, victims and witnesses simply did not know the names of those who had beaten, tortured, or mistreated them during the occupation. A related problem was that some Japanese surnames were so common that the authorities were sometimes unsure about whether they had the right person on trial. For example, in the September 1946 trial of Saburo YAMURA at Balikpapan,42 the court-martial discussed the fact that Yamura’s surname was common among the Japanese, and that it consequently was possible for there to have been a “mistake of persons.” In this prosecution, however, the court was convinced that there was no mistaken identity since “it has been established at the trial that there was only one Yamura at Sanga-Sanga.” Yamura, who had been charged with systematic terrorism, was found guilty and sentenced to death.43

Cross-racial identification was also an issue. While familiar with Indonesian, Chinese, and Malay facial features, the white and Eurasian residents of the NEI had little experience with identifying Japanese faces and this, combined with the language barrier, complicated identification of perpetrators.44

Another challenge for prosecuting authorities was that the Japanese occupation records containing possible evidence had been destroyed by the Japanese prior to the surrender. The accompanying photograph (see next page)—depicting sixty Kempeitai members suspected of war crimes—shows how the Government Office for the Tracing of War Crimes worked to overcome investigative obstacles. Published in Batavia’s Het Dagblad newspaper in 1946, the intent of this “wanted poster” was not only to find and identify suspects but also to obtain witnesses who could testify against these potential Japanese defendants.45

While NEI investigators charged with locating and identifying war criminals, and building a prosecutable case with statements and records faced a daunting enough challenge, their efforts also were hampered by the ever-increasing turmoil

41. Post et al., eds., Encyclopedia of Indonesia in the Pacific War, 412.
42. Balikpapan is a seaport town on the east coast of the island of Borneo.
44. Nothing has changed: today, cross-racial identification continues to be a problem in judicial proceedings, particularly in multi-racial societies. See Bell C. F. Chung, Cross-Racial Eyewitness Identification (Saarbrucken, Germany: Lambert Academic Publishing, 2011).
45. Post et al., eds., Encyclopedia of Indonesia in the Pacific War, 158.
of the on-going insurgency. The inhabitants of the NEI were focused on the struggle for independence being waged against colonial authorities by the self-proclaimed Republic of Indonesia; their attention was on the future and not on the past. Additionally, those Indonesians who supported the revolution (and who took an active role in it) had little interest in the investigation of war crimes, especially when they believed that Dutch regular and KNIL forces battling revolutionary forces also were committing war crimes against the insurgents. In any event, after
guerrillas attacked and killed all members of an Australian team investigating war crimes in West Java in 1946, it was clear to all involved in temporary courts-martial operations that there was an element of personal danger involved.\textsuperscript{46}

For all of these reasons, the majority of Japanese prosecuted by the Dutch fell into two categories: POW and internee camp personnel and members of the Kempeitai and Tokkeitai. The former were readily identifiable because the Dutch POWs and internees had frequent contact with them and, as the camps were still operating in the NEI when the Japanese surrendered in August 1945, the men running those camps were still in the colony. Similarly, members of the Kempeitai military police and Tokkeitai naval police were readily identifiable given their high profiles in the day-to-day Japanese occupation of the NEI. Kempeitai and Tokkeitai officials arrested and interrogated NEI citizens suspected of anti-Japanese activities, and the victims who had contact with these police officials usually had little problem identifying those Japanese who had beaten, tortured, or otherwise mistreated them while in Kempeitai or Tokkeitai custody.

In short, there is little doubt that there was sufficient evidence to support the prosecution of those Japanese defendants who appeared before temporary courts-martial in the NEI between 1946 and 1949. There also is no doubt that more than a few Japanese who committed war crimes in the NEI escaped responsibility for their crimes, but how many avoided trial—and for what reason(s)—never will be known.

\textit{Cases by Offense: “Systematic Terrorism”}

An examination of the records of more than two hundred temporary courts-martial shows “systematic terrorism” was frequently prosecuted, usually together with murder and mistreatment of POWs or civilian internees, or both. Many of the Japanese accused of this offense were (not surprisingly) members of the Kempeitai or Tokkeitai. Dutch East Indies authorities considered systematic terrorism to be a major feature of the Japanese occupation. Note: While the United Nations War Crimes Commission had identified systematic terrorism as a war crime, Dutch authorities were apparently the only ones to prosecute the offense at a military tribunal.

The terrorism was most often seen in torture used to secure information during interrogations. On 18 July 1947, for example, a temporary court-martial in Makassar found sixteen Tokkeitai members guilty of systematic terrorism arising out of their torture and mistreatment of NEI citizens. The lead defendant, Shigeki MOTOMURA, was a Navy sub-lieutenant and second-in-command of the Tokkeitai in the south-west Celebes from November 1943 to August 1945. But all sixteen were prosecuted as a group (as permitted by Decree No. 45, Article 10) and the charging document described the horrific “systematic terrorism” committed by the members of the group as follows:

\begin{quote}
. . . repeated, regular and lengthy torture and/or ill-treatment, the seizing of men and women on the grounds of wild rumors, repeatedly striking them with the hand and with sticks during their
\end{quote}

\textsuperscript{46} Ibid.
interrogation, kicking them with the shod foot, hanging them up by the arm or leg, burning them with glowing cigarettes and bicycle bells, wrenching their knee-joints apart, stripping women and exposing them in this condition to the public view, withholding food from arrestees, compelling them to put their thumb print on blank sheets of paper . . . these acts having led to or at least contributed to the death, severe physical and mental suffering of many and the condemning to death or imprisonment of several innocent persons.47

Sub-lieutenant Motomura received the death sentence because, as the commanding officer, he “ordered, encouraged or allowed” the commission of one or more of the charged war crimes. The other accused were found guilty collectively and sentenced based on their level of involvement in the crimes (either as perpetrators or as instigators). The tribunal expressly concluded in its opinion that the accuseds were not being found guilty as individuals but as a group because, “with regard to the Tokkeitai taken as a group, legal and convincing evidence has been produced at the sitting that it [the Tokkeitai] was guilty” as charged. Nine defendants, including Motomura, were sentenced to be hanged; the remaining seven received imprisonment.48

Similarly, in Prosecutor v. Saburo YAMURA, a tribunal sitting in Balikpapan convicted a thirty-two-year-old Japanese interpreter of “systematically carrying out a reign of terror against civilians and prisoners of war . . . by repeatedly and unnecessarily . . . in a manner far exceeding the limits of the normal exercise of discipline . . . giving them violent blows with his fist or with a thick piece of hard wood.”49 The evidence presented showed that Yamura . . . behaved in a brutal fashion, that for no reason he beat people until they fell down unconscious, that he then threw water over them in order to bring them around and when they were again conscious beat them once more, that his mistreatment of two Indonesians, Oesman and Senen, was to such an extent that they died.50

The court concluded that, in addition to causing the deaths of Oesman and Senen, the accused also had “behaved in a very inhuman way, acted in an arbitrary and despotic fashion, [and] brutally beaten defenseless persons” on other occasions. On 13 September 1946, the three-judge panel, with Maj. J. L. Paardekooper presiding, found him guilty of systematic terrorism, and condemned him to death. Less than ten days later, the Commander of Dutch Forces in East Borneo confirmed the sentence.51

48. Law Reports of Trials of War Criminals, vol. 8, 141.
50. Ibid., 2.
51. Ibid., 3.
Army Captain Kenitji SONE, the first Japanese national to be executed by the Dutch for war crimes committed in the Indies, was the commandant of both POW and internment camps. From September 1942 until March 1944, he was in charge of a POW camp complex in Batavia. In March 1944, Sone was transferred from Batavia to Tjideng where, until June 1945 he was in command of a large internment camp containing Dutch women and children. When the war ended for the Japanese in August 1945, Sone headed the office in charge of all POW camps on Java.\textsuperscript{52}

The thirty-six-year-old SONE was considered to be particularly brutal and cruel in his treatment of prisoners and internees. Testimony and sworn statements given by twenty-three Dutch, Australian, British, and American POWs who had been held in Batavia disclosed that Sone routinely mistreated POWs by striking them “with the bare fist and with hard objects”; on one occasion in October 1943, the accused “hit 20 Dutch officers for about 1 ½ hours with his fist and then when his hand hurt struck them over the head with a stick.” Several POWs testified that Sone had refused to permit medical care for two Dutchmen who had been seriously wounded by a Japanese sentry, with the result that the men died two days later. One Dutch soldier also testified that Sone’s war crimes reflected his “intention to destroy the whites intellectually and physically, to which object he gave himself wholeheartedly” and that Sone was responsible for “the worsening conditions in the camps” that caused “many cases of death.”

Sone was alleged to have intentionally withheld food and medicine from both POWs in the Batavia camp and civilians in the Tjideng camp. Three Dutch physicians, for example, testified that the “hygienic situation” was “scandalously bad,” and despite their pleas, Sone did nothing to improve conditions. But the court ultimately concluded that Sone was not legally responsible for the shortages of food and medicine in either camp, since his superiors determined the quantity of items delivered to both facilities. But, while the court did not hold Sone liable for the hardship resulting from these shortages, the remaining evidence against him was overwhelming.

While in charge of the civilian internment camp, Sone made the women and old people “parade for roll-call for hours on end, including at night” and denied

\textsuperscript{52} De Jong, \textit{Collapse of a Colonial Society}, 439.
them “rest, food, medicines and care and attention.” His “reign of terror” (Sone also was charged with systematic terrorism) reached its zenith when, in June 1945, he punished the entire Tjideng internment camp of 10,700 women and children by withholding food for forty-eight hours. Shortly thereafter, Sone intentionally destroyed a large quantity of bread destined for these now starving civilians.

Faced with evidence of this widespread mistreatment, the three-judge court consisting of Col. Dr. J. H. Peter, Capt. Dr. E. Rijckmans and British Army Maj. J. F. Hartman found Sone guilty as charged. He was sentenced to death and executed in Batavia on 7 December 1946.53 As the first war criminal to be hanged, there was considerable media interest in his case. The accompanying photo of Captain Sone shows him in uniform during his trial.

Another illustrative case is that of Capt. Ryohei MIYAZAKI, commander of POW camps located along the Pekanbaru Railway. He was sentenced to death on 30 May 1948 by a temporary court-martial convened in Medan. The evidence presented to the court showed that the number of deaths in the camps under Miyazaki’s control had been extraordinarily high, due chiefly to a shortage of food and clothing, and because Miyazaki had forced the POWs to labor in the construction of the Pekanbaru railway and the Trans-Sumatra highway. While prosecution insisted that the accused’s failure to obtain the necessary food and medicine for these POWs was the cause of their deaths, the court ultimately concluded—using the same rationale as the tribunal in the Sone case—that there was insufficient evidence upon which to find Miyazaki criminally liable for the deaths due to a lack of food and medicine. But the three-officer court found him guilty of mistreatment of POWs because he permitted the repeated, vicious, and sadistic beatings of POWs by Korean camp guards under his control. The accompanying photograph was taken when Capt. Miyazaki was in custody awaiting trial; he was executed in June 1948.

53. Prosecutor v. SONE Kenichi, 14 August 1946, Vonnis No. 24/1946. Captain SONE’s surname is also sometimes spelled as SONEI.
Cases by Offense: “Unnecessarily Exposing POWs to Acts of War; Using Prisoners in War Work”

On 5 February 1947, a tribunal sitting in Makassar found Navy 1st Lieutenant Koshiro TANABE guilty of using POW labor to build an ammunition depot. The legal basis for finding Tanabe guilty was clear-cut, as using prisoner labor in war work had been expressly prohibited by the Hague Convention of 1907 and the Geneva Convention of 1929, both of which had been signed by the Japanese. But Tanabe added insult to injury when he allowed the depot to be built only fifty meters away from the POW camp (containing Dutch, Australian, and British personnel), as this meant that he was “unnecessarily subjecting prisoners of war to danger.”

The evidence presented at the trial—through the testimony of Dutch and Allied ex-POWs—was that the Allies had repeatedly targeted both the depot and the POW camp in their bombing operations. Why? Because the Japanese had placed anti-artillery guns in and around the POW camp, with the result that wounds to POWs caused by bomb splinters “were a regular thing.” At least one prisoner died when his “head [was] smashed by bomb-splinters.” On another occasion, a field where “hundreds of prisoners of war were daily employed was only missed [by Allied bombs] by some tens of yards.”

The temporary court-martial sentenced Lt. Tanabe to seven years’ imprisonment for this war crime.54

Cases by Offense: “Unlawful Execution”

The gist of the war crime of “unlawful execution” (Dutch: onwettige executie) was that the accused had killed (or ordered his subordinates to kill) one or more NEI citizens for some alleged crime or misconduct, but that the execution had occurred without any regularly constituted trial or hearing to determine guilt or innocence. These unlawful executions were very widespread, as reflected by the fact that, along with “systematic terrorism,” this offense appears most often on the indictments at temporary courts-martial.

The trial of Army 1st Lieut. Susuki MOTOSUKE, held in Amboina in January 1948, is a good illustration of how this war crime occurred. The accused, an engineer officer serving with the Hosikikan (Japanese Intelligence Service) on the island of Ceram, was charged with having, “contrary to the laws and customs of war,” intentionally “incited” his subordinates “to execute Indonesian natives, subjects of the Netherlands East Indies,” knowing that these victims “had not been tried, at any rate in a legal manner.” The evidence at trial showed that, in August 1944, Motosuke had ordered his men to execute a Dutchman by firing squad. The killing was carried out in Motosuke’s presence, as he gave the actual order to fire to the execution squad. The following month, Motosuke had ordered his men to arrest three Indonesians by the names of Skalwik, Tarumasele, and Mailoa, for

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alleged crimes against the Japanese. Motosuke believed that Skalwik had stolen a rifle and that Tarumasele had set ambushes to harm Japanese soldiers. As for Mailoa, he was accused of having shot at and then robbed Japanese nationals. In October, Lieut. Motosuke again presided over the firing squad and gave the actual order to shoot the three Indonesians.

At trial, Motosuke admitted that he had ordered all four men to be killed. But he insisted that these executions had only occurred after their trial by a Japanese court-martial. This defense, however, fell flat when the court members heard from a Japanese witness who had served as the prosecutor for the alleged court-martial of the three Indonesians. He testified that while he had made “some preparations for a trial,” he “could not remember that the case was actually tried.” The temporary court-martial concluded from this testimony that no trial in fact had occurred and found Motosuke guilty of “murder, committed four times” on 28 January 1948. He was sentenced to death.55

Similarly, Vice Admiral Tadashige DAIGO was charged with “unlawful execution” and tried by a tribunal sitting in Pontianak.56 The proceedings, which began on 22 September and ended on 3 October 1947, heard evidence that “at various times which can no longer be identified” (but between early February and the end of May 1944), the accused ordered his subordinate, Keimei UESUGI, the commander of the Pontianak Tokkeitai, “to execute in groups of 100, approximately 1054 persons.” These individuals had been arrested “on suspicion of a revolt against Japanese authority in West Borneo.” The prosecution showed that Uesugi, acting under orders from Admiral Daigo, carried out these executions “by having said persons beheaded in groups of about 100.”

Admiral Daigo admitted at his trial that he had ordered the executions, but insisted that they had been “sentenced to death in an entirely lawful manner by an ‘Emergency Court-Martial’” over which Daigo himself had presided. After considering evidence that, prior to this so-called trial, the deceased victims had been subjected to all sorts of tortures, such as the “water cure” and the “electric cure,” well-known methods applied by the Japanese to force individuals to confess, the judges rejected Admiral Daigo’s claim that there had been “any form of trial.”

On 22 September 1947, the three judges found that there had been no conspiracy against Japanese authority and that Daigo had ordered the executions without any legal authority. The case closes with these final words: “That the Court Martial . . . has arrived at the opinion that the accused, who did not shrink from causing the deaths of hundreds of innocent civilians, can be meted out only one punishment, namely, capital punishment.” Admiral Daigo was sentenced to death and was executed on 6 December 1947.57

56. Pontianak is a seaport town on the island of Borneo.
Cases by Offense: “Mass Murder”

More than a few temporary courts-martial heard evidence of “mass murder” committed by the Japanese, and Prosecutor v. Gakuji IIMA, Yoshimitsu OCHI, Shinichi TAKEYAMA and Yukio NARIKIYO is a good example. The four men were civilians living in east Borneo. Iima functioned as a police inspector in the “Borneo Civilian Administration”; Ochi, Takeyama, and Narikyo were employed in a Japanese-owned transport company in Balikpapan.

The evidence presented at the tribunal sitting in Balikpapan was that all four men, at the instigation of the local Japanese military commander, participated in the mass murder of at least twenty-five Indonesian men and women early in July 1945. These killings had occurred because the Japanese believed that the Indonesians were organizing an anti-Japanese plot in anticipation of Allied landings in east Borneo. There was, in fact, no such conspiracy, but the Japanese believed otherwise.

In the Verbal Process conducted in December 1946, the four accuseds denied any knowledge of the killings. The three military judges, however, heard live testimony that all four Japanese defendants had participated in at least two separate killings of civilians. The first was a murder of “about 13” men, women, and children. The second mass murder occurred about seven days later, and involved “20 women and children between the ages of one and twenty.” Additional corroboration was presented in the form of written statements from individuals having knowledge of the killings. There also were written statements from other witnesses, who affirmed that the four accuseds bound the victims and then shot them with pistols and rifles.

On 3 December 1946, Maj. J. L. Paardekooper, the president of the court-martial, joined by Capt. B. van Eyk and First Lt. O. van Meeteren, found the four men guilty of “mass murder” and “murder” and sentenced them to death. The fiat of execution confirming the sentence was issued on 1 January 1947.

Cases by Offense: “Hostilities Contrary to the Terms of the Armistice”

While the politically aware indigenous inhabitants of the NEI did question the status quo prior to World War II, the success of the Japanese in the months after the outbreak of World War in World War II accelerated the desire for freedom from the Dutch. The defeat of a white colonial army and navy by an Asian power was evidence for more than a few Indonesians that their Dutch masters were not invincible. Additionally, the Japanese occupiers encouraged the inhabitants of the NEI to embrace the “Asia for Asians” ideology and reject any intellectual, political, and cultural ties with their Dutch overlords. Sukarno, the Indonesian nationalist leader, declared the independence of the Republic of Indonesia on 17 August 1945. Consequently, when the Dutch returned to power in the NEI, they faced a revolution in the form of a guerrilla insurgency which only became more violent with each passing week.

With this as background, it should not come as a surprise that four Japanese soldiers, adherents to the “Asia for Asians” mantra, decided to support the
Indonesian rebels after a cease-fire had been signed between the Allies and Japan. Under the terms of the armistice and “the laws and customs of war,” the Japanese soldiers were required to refrain from any hostilities. Consequently, when these four Japanese nationals provided arms and ammunition to the rebels, and participated in at least one guerrilla attack against NEI authorities, they were violating the armistice—and committing a war crime.

In January 1947, a temporary court-martial sitting in Makassar heard evidence against Minoru HATADA, Kioshi KANAI, and Suekichi IKEDA. When the fighting ended in August 1945, the three soldiers (and a fourth, Sergeant Rokuro OTA) had disobeyed orders to remain in their camp in the south Celebes. On the contrary, they had deserted and took with them a variety of weaponry, including machineguns, rifles, pistols, and hand grenades. The men also had at least a dozen “self-made bombs.”

They violated the armistice when they provided these weapons and explosives to Andi Moesa, an Indonesian “extremist leader.” According to the decision in Prosecutor v. Hatada, Kanai and Ikeda, the Japanese soldiers took part in guerrilla meetings on several occasions, including one attended by at least 300 insurgents in September 1945. Finally, during the night of 16–17 February 1946, the soldiers planted a self-made bomb next to the back wall of the home of a local NEI government official, which then exploded.

The NEI authorities were convinced that the impetus for the war crimes committed by Hatada, Kanai, and Ikeda was linked directly to Japanese ideology. The court’s opinion states that the accuseds believed in the principle of a “world family under Japanese leadership” and that they were acting upon the belief that they were acting as “liberators.” But, continues the decision, “in truth the whole Japanese war was a war of aggression” and the ultimate goal was to make “all people” of the Far East into “servants” of the Japanese.

Concluding that the Japanese had committed a war crime by violating the armistice, in violation of the law of war and Article 35 of the 1907 Hague Convention, the tribunal sentenced them to death. All three men were executed.58

Cases by Offense: “Enforced Prostitution”

For the first time in military legal history, the offense of “enforced prostitution” (which had been identified by the United Nations War Crimes Commission as a war crime) was prosecuted at a military tribunal.

Brothels were not legal when the Japanese occupied the NEI in 1942. Consequently, the Japanese decision to permit houses of prostitution that would provide sexual services and “relaxation” for Japanese military personnel residing on Java, Sumatra, Borneo, and other islands as part of the occupation was a violation of local law. It also was a violation of international law because Article 43 of the Hague Convention of 1907 required an occupier to respect “the laws in force in

a country.” And, because of the manner in which the Japanese operated these brothels, it became a war crime, too.

The Japanese military had been routinely procuring prostitutes for its personnel since 1938. By mid-1942, “there were reportedly 100 military brothels in Southeast Asia, and 400 in all of Asia.” Official Japanese approval of “comfort women” and managed prostitution, however, did not make the practice legal in the occupied NEI. Perhaps the Dutch would have let the matter rest but, when they learned that most of the women and girls “recruited” by the Japanese for prostitution in fact had been forced to work in brothels, they decided to prosecute the Japanese for the war crime of enforced prostitution. The NEI authorities were especially outraged by the numerous cases in which Dutch women and girls had been forced to work as prostitutes in Japanese-run bars, night clubs, and similar venues.

In *Prosecutor v. Washio AWOCHI*, the accused was a Japanese civilian who operated the Sakura-Club, a restaurant-night club in Batavia. According to the indictment, Awochi had “in time of war and as a subject of a hostile power, namely Japan,” committed “war crimes by, in violation of the laws and customs of war, recruiting women and girls to serve” the sexual needs of Japanese patrons. The indictment alleged that the women and girls “were not able to leave freely” but rather were forced “to commit prostitution . . . under the direct or indirect threat of the Kempeitai.”

The temporary court-martial heard testimony from twelve women or girls who had been forced into prostitution. The women explained that initially they thought they were being hired to work as waitresses but that they then were “gradually forced to commit acts of prostitution with [Japanese] customers.” They “were required to earn a minimum of 450 guilders per evening, and thus receive at least three visitors.” Among those forced into prostitution were girls of twelve and fourteen years of age. Evidence also was presented to the court that females who resisted were threatened with imprisonment, and some were severely beaten.

The accused admitted to running the brothel “with the assistance of his Dutch mistress, Lies Beerhorst,” but insisted that he should not be found guilty because “he had done so under orders of the Japanese authorities.”

The court rejected Awochi’s defense of superior orders and, noting his significant financial interests in the Sakura Club, found him guilty of the “war crime of enforced prostitution.” He was sentenced to ten years’ imprisonment.

Similarly, in *Prosecutor v. Shoichi IKEDA*, Ikeda, a forty-five-year-old Army colonel, was found guilty of the war crime of enforced prostitution. The prosecutor filed an indictment charging that then Lieutenant Colonel Ikeda had, in March and April 1944, organized brothels for the Japanese 16th Army headquarters in Batavia, and that he populated these brothels with “about thirty-five” women and girls from nearby internment camps. These Dutch women had been forcibly


removed from the camps, and forced to work as prostitutes; they had been repeatedly raped by their Japanese clients.

While the prosecutor asked for the death penalty, the temporary court-martial sitting in Batavia, presided over by Lieutenant Colonel J. la Riviere, rejected this recommendation. The record of trial indicates that the judges showed leniency because Colonel Ikeda organized these brothels under orders from his superior, Major General NOZAKI, and, although he carried out Nozaki’s orders, was “unenthusiastic” about the task. Ikeda had, in fact, “protested” against it. The court also noted that Ikeda had never used the services offered by the houses of prostitution that he organized.

Consequently, while it found Ikeda guilty of “transporting women and girls for enforced prostitution,” “enforced prostitution,” and “rape” (as an aider and abettor), the court-martial sentenced Ikeda to fifteen years’ imprisonment.61

**Nature of Japanese War Crimes**

Why were Japanese war crimes in the Indies so widespread and systematic? Why were the war crimes themselves unusually vicious, cruel, and sadistic in nature? Two factors provide the best explanation: the “Asia for Asians” ideology that was an integral part of Japan’s occupation strategy and the “Code of Bushido” inculcated in Japanese uniformed personnel from the most senior to the most junior ranking individual.

Japan’s goal in the NEI—and in other occupied areas—was to re-make Asia as a racially homogenous area, or at least an area free of white European imperialists. Just as the Germans ultimately sought to re-make Europe during the Second World War—as a greater Aryan Lebensraum emptied of gypsies, Jews, Slavs, and other undesirable racial untermensch62—so too did the Japanese seek to remake Asia as a “Greater East Asia Co-Prosperity Sphere” devoid of all European influences. Nowhere was this intentional elimination of Europeans and their culture more pronounced than in the NEI, where the Japanese sought to erase 400 years of Dutch colonial rule. But eradicating four centuries of Dutch imperialism—and restructuring life and society from top to bottom—required a “hard” approach toward the recalcitrant Dutch (and their Eurasian and Indonesian allies), who naturally resisted any changes that would end their privileged status in the islands.

As far as the Japanese were concerned, this “Asia for the Asiatics” endstate could only be achieved with “the physical extermination of Western ‘intruders’”63

and, in the NEI, this ethnic cleansing began immediately after the Japanese conquest in March 1942. Some Dutch government officials and civilians were killed outright. The surviving Dutch “were immediately placed under control and gradually brought together in concentration camps.” On Java alone (the most populous island in the NEI), more than 70,000 Europeans were interned between 1942 and 1945. In addition to these civilian internment camps, there also were POW camps that initially held more than 42,200 Europeans. Many of these captives did not survive; the death rate among civilian internees, for example, was one death out of six (13,120 or 13.6 percent).

But this “Asia for Asians” policy only partly explains the widespread and systematic nature of Japanese war crimes in the NEI. A second factor, the Code of Bushido, also had a profound influence. “Inculcated into the Japanese soldier as part of his basic training,” the Bushido precept held that it was cowardly to surrender to the enemy. Those Japanese in uniform who did surrender (or were captured) consequently brought great dishonor upon themselves and their families.

It follows that those who had surrendered to the Japanese—regardless of how courageously or honorably they had fought—merited nothing but contempt; they had forfeited all honor and literally deserved nothing. Consequently, when the Japanese murdered POWs by shooting, beheading, and drowning, these acts were excused since they involved the killing of men who had forfeited all rights to be treated with dignity or respect. While civilian internees were certainly in a different category from POWs, it is reasonable to think that there was a “spill-over” effect from the tenets of Bushido. Nothing else explains the vicious and cruel beatings of civilians for minor disciplinary infractions committed in the camps and the repeated torture of civilians during interrogations at the hands of the Kempeitai and Tokketai.

**Sentences**

As already mentioned, NEI war crimes prosecutions were unique among Allied prosecutions in having a mandatory sentencing framework: death, life, or one day to twenty years. Consequently, when the three officers sitting on a court-martial panel sentenced a Japanese accused, they certainly considered a variety of individual factors in a particular case—but they were restricted in fashioning the appropriate sentence in that case.
Although the NEI war crimes courts sentenced more Japanese to death than did any other war crimes tribunal in the Pacific, an analysis of those capital cases reveals that the judges sometimes exercised leniency in those prosecutions where one might expect a death sentence. For example, as previously shown in Prosecutor v. Shoichi Ikeda, the court refused to follow the prosecution’s recommendation to impose capital punishment (and instead sentenced Ikeda to fifteen years in jail) because it found facts that mitigated against this severe punishment.

Additionally, while NEI war crimes tribunals did impose more death sentences than did any other Allied tribunal, a closer look at the numbers is revealing. Table 3 shows that while the raw numbers for capital punishment were highest for the NEI (236 out of 1,038 accuseds), when this figure is compared against the number of Japanese convicted at trial, the percentage of those convicted men being sentenced to be hanged falls into the middle range; the NEI (at 24.4 percent) was higher than Australia and the Philippines but lower than France, the United Kingdom, and China.

<table>
<thead>
<tr>
<th>Country</th>
<th>Accused</th>
<th>% Convicted</th>
<th>Death</th>
<th>% Receiving Death</th>
</tr>
</thead>
<tbody>
<tr>
<td>NEI</td>
<td>1038</td>
<td>93.4% (969)</td>
<td>236</td>
<td>24.4%</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>978</td>
<td>88.1%</td>
<td>223</td>
<td>32.7%</td>
</tr>
<tr>
<td>Australia</td>
<td>949</td>
<td>69.5% (644)</td>
<td>153</td>
<td>23.7%</td>
</tr>
<tr>
<td>United States</td>
<td>1453</td>
<td>84.6% (1229)</td>
<td>143</td>
<td>11.6%</td>
</tr>
<tr>
<td>China</td>
<td>883</td>
<td>57% (504)</td>
<td>149</td>
<td>29.6%</td>
</tr>
<tr>
<td>France</td>
<td>230</td>
<td>86.1% (198)</td>
<td>63</td>
<td>31.8%</td>
</tr>
<tr>
<td>Philippines</td>
<td>169</td>
<td>78.7% (133)</td>
<td>17</td>
<td>12.8%</td>
</tr>
</tbody>
</table>

One other factor almost certainly played a role in sentencing. Most of those men serving as officers on the three-judge temporary courts-martial had themselves been POWs—and personally experienced the brutality of captivity at the hands of those they now judged. Then Major Levinus de Groot, for example, who served as president of the tribunal in Batavia from 1947 to 1949, spent the entire war as a POW on Java. If these war crimes tribunals were convened today, men like de Groot would have been “excused” from serving as “judges” on the grounds of prejudice or bias; the rationale would have been that their experiences as POWs deprived them of the impartiality necessary to sit in judgment. In 1946, however, NEI authorities almost certainly took the view that there was no reason why these men could not be fair as judges and, having experienced first-hand the hardship that accompanied the Japanese occupation, in fact might possess insights that would assist them as triers of fact.
There also was a practical problem: there simply was a shortage of officers in the Indies (especially those with legal training like de Groot) and if the NEI authorities wanted truly unbiased court members, such individuals would have had to come from Holland. This, however, was impossible: Holland itself was coming out of a brutal occupation under the Nazis, re-establishing its own criminal legal system, and prosecuting Nazis for war crimes committed on Dutch soil, and legally trained personnel were in short supply there as well. That said, there is no doubt that the judges sitting on the temporary courts-martial knew that the Japanese had waged a race war against them and that the widespread and systematic nature of their war crimes resulted from the “Asia for Asians” ideology and the Bushido precepts. This knowledge certainly influenced the sentencing process. Whether or not this resulted in flawed sentences will never be known but, at least when measured by today’s standards of due process, it seems highly likely.

A final point. The members of the temporary courts-martial imposing sentences to death and to confinement assumed that the accuseds would serve their sentences in the NEI. But this was not to be, as there was a wholesale repatriation of Japanese nationalists convicted of war crimes to Japan in 1950—at least some of whom had been sentenced to death—as explained below. Had the officers serving on the courts-martial known that the Japanese they were sentencing to life imprisonment, or to twenty-, fifteen-, and ten-year sentences would be living in Japan in 1950, they might have imposed different sentences. But just how this knowledge could have affected sentencing is speculative.

Aftermath

Dutch war crimes prosecution in the NEI came to a halt on Christmas Eve 1949, since the legality of the tribunals was about to disappear with the end of Dutch sovereignty in the islands of the NEI on 27 December 1949. While the NEI authorities had managed to carry out the executions of almost all Japanese nationals who had been sentenced to death, it seems that a few escaped the hangman’s noose because NEI authorities ran out of time. Lieutenant Colonel KAWABE Masashi, for example, had been sentenced to death for war crimes committed as a Kempeitai member. But, because his execution had not been carried out prior to 27 December 1949—probably because his death sentence was confirmed too late to carry out a hanging—Kawabe’s sentence was reduced to a term of imprisonment and, as explained above, he soon returned to Japan. Another Japanese war criminal, WADA Kunishige, escaped the noose as well, but under rather bizarre circumstances. Convicted in October 1945 for his war crimes as a member of the Kempeitai, Wada escaped twice from Tjipinang prison in Batavia. After being recaptured twice, Wada escaped a third time from jail. He remained in Batavia and passed himself off as an Indonesian taxi driver of

Japanese descent. Unfortunately for Wada, he was recognized by the police. He was shot and killed while attempting to escape.70

As for Lt. Col. Kawabe and all other Japanese war criminals serving sentences in jail, they were very lucky. On 26 December 1949—one day before end of the NEI as a sovereign state—Kawabe and his fellow inmates were repatriated to Japan. The 693 men, who had been incarcerated in Tjipinang Prison in Batavia, were transferred to the merchantman M/S Tjisadane. Then, under the supervision of the International Red Cross, they sailed to Yokohama. The convicted men were repatriated under an agreement, brokered between the NEI authorities and the Supreme Commander Allied Powers, that these Japanese nationals would serve the remainder of their sentences in the Sugamo prison in Tokyo. Presumably the NEI authorities could have transported the Japanese to Holland for incarceration, but this made little sense given that Japan was much closer geographically and adding 693 war criminals to those already jailed in Sugamo seemed more practicable. As the Dutch soon discovered, however, the idea that Japanese war criminals convicted in the NEI actually would serve their prison terms in Japan was not to be: as soon as the Allied occupation of Japan formally ended in April 1952, Japanese authorities quickly reduced the sentences of the incarcerated men and took measures to parole them. According to de Groot, the Japanese announced on 15 August 1952 that they intended to release 821 prisoners who had been sentenced in NEI military courts and were now in Sugamo prison—a bitter pill for him and others who had participated in these war crimes prosecutions.71

In March 1956, after the Netherlands Ambassador to Japan presented a letter to the Japanese in which the Dutch formally agreed to “an acceleration of the release of Japanese war criminals sentenced by Netherlands war tribunals and now detained in Sugamo-prison,”72 it was only a matter of time before the last inmate went free. The last individual was released in 1958 and, with his release, the history of war crimes prosecutions in the NEI from 1946 to 1949 came to an end.73

Some Conclusions

Other than the United States, no other country prosecuted more Japanese nationals for war crimes committed in the Pacific than did the Netherlands. From March 1946 until December 1949, the temporary courts-martial convened in twelve locations in the East Indies prosecuted 1,038 defendants in 448 separate trials, with more than one-third of the accused being prosecuted in Batavia (Djakarta).  

70. Ibid.  
71. Ibid., 392.  
72. Ibid., 425.  
73. While war crimes prosecutions ended in the NEI, some Japanese who had committed war crimes in the archipelago later were tried by Australian military tribunals sitting in Australia; in 1951, for example, an Australian court convicted several Japanese nationals for their unlawful medical experiments on seventeen Indonesians (the victims had been injected with an experimental tetanus antitoxin).
In deciding how to prosecute war crimes, the Dutch authorities embraced a unique and radically new legal framework that was different from anything else they had used previously and that broke new ground in international law. These war crimes courts are distinguished by a number of “firsts,” including:

- the only national tribunals to prosecute groups (Kempeitai and Tokkeitai) and then impute criminal liability to members of those groups;
- the only war crimes courts to have guidelines on sentencing;
- the first tribunal to prosecute “enforced prostitution” as a war crime;
- the only tribunal to prosecute “systematic terrorism” as a war crime;
- the only tribunal to prosecute enemy soldiers for committing hostile acts in violation of a truce.

War crimes committed by the Japanese against NEI citizens were a manifestation of the race war triggered by the “Asia for Asians” ideology and the code of Bushido; the severity, viciousness, and widespread nature of the crimes during the occupation of the Indonesian archipelago reflect these two factors and the records of the war crimes tribunals contain overwhelming evidence supporting this view.

Although the officers who sat on the three-judge temporary courts-martial must have been aware of the race war that had been waged against them, there is no demonstrable proof that this prevented full and fair trials for the Japanese. On the contrary, whether weighing evidence to determine guilt, or fashioning an appropriate sentence, the court-martial panels were both meticulous and reasonable. In Sone, for example, the court determined that the accused was not guilty of withholding food and medicine from either POWs or civilians. This was a significant decision since the lack of food and medicine had caused much suffering and death—and it might have been expedient to hold Sone criminally liable. In Hashizume, the court convicted the accused of multiple unlawful executions but imposed a sentence of six years because the accused had been obeying the orders of his superior. In Ikeda, the court found the accused guilty of enforced prostitution but rejected the prosecutor’s call for the death sentence; the three judges instead sentenced Ikeda to fifteen years because, as with Hashizume, they found mitigating factors. These three cases are not unusual, but were the norm—reflecting that the judges set aside their passions and prejudices (which they certainly had) and ruled fairly on the evidence and the law.

While this article breaks new ground, and reaches new conclusions about Dutch war crimes tribunals in the East Indies, much more research and analysis needs to be accomplished. This preliminary examination, however, shows that the trial of Japanese war criminals in the Indies was a unique event that deserves greater attention from historians.