

ARTICLE

Why were there no war crimes trials for the Korean War?

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Abstract

In the Korean War of 1950–53, U.S. authorities were determined to pursue atrocities perpetrated by North Korean and Communist Chinese forces through legal channels, in keeping with the standards they believed they had set after the Second World War. Yet, their plans foundered in Korea, despite extensive groundwork for prosecutions. Four factors were responsible. First, it was difficult to find reliable evidence and to identify and apprehend suspects. Second, U.S. officials rapidly lost confidence in the idea of prosecuting national leaders. Third, the lack of clear-cut victory in the conflict necessitated a diplomatic solution, which was incompatible with war crimes trials. Fourth, the moral standing of the West, and hence its authority to run trials, was undermined by the large number of atrocities committed by the United Nations side. Thus, the U.S. plan for war crimes trials was dropped without fanfare, to be replaced by an anti-Communist propaganda campaign.

The Korean War of 1950–53 was a brutal conflict.¹ Atrocities were committed on all sides and were quickly reported to military authorities and in the world's presses. From the outbreak of war in June 1950, United States (U.S.) authorities were determined to pursue atrocities perpetrated by North Korean forces through legal channels, originally in trials to be run by military commissions set up by the United Nations (UN). The entry of Chinese troops into the conflict a few months later only reinforced U.S. resolve to pursue crimes committed by the Communist side. American officials soon commenced planning for war crimes trials in Korea and started to collect evidence and to produce legal briefs. These preparations reflected a commitment expressed in war crimes trials after the end of the Second World War: Allied officials had hoped, intended and declared that trials held in Asia and Europe from 1945 onwards would help to cement a higher standard of accountability for war crimes in future conflicts. Yet, these plans foundered in Korea. This article examines the logic behind plans to prosecute crimes committed during the Korean War and explains why those plans did not come to fruition, despite the extensive groundwork that had been laid. The U.S. is the primary focus of analysis: America dominated the war in Korea and in practice maintained control over the UN response to the Korean crisis, especially in the early stages of the conflict.² It was also the most determined of the states that fought North Korea to secure justice for the victims of war crimes.

Four factors thwarted attempts to run trials. First, in the case of direct perpetrators of war crimes, it was difficult to find reliable evidence and to identify and apprehend suspects. This issue

¹ I thank Robert Cribb for his comments on drafts of this article, Sharon Williams Chamberlain for help in locating archival sources, and Su-kyoung Hwang, Grace J. Chae, Andrew Webster and Paul Taucher for expert advice.

² William Stueck, *Rethinking the Korean War: A New Diplomatic and Strategic History* (Princeton: Princeton University Press, 2002), 125; William Stueck, *The Korean War: An International History* (Princeton: Princeton University Press, 1995), 369, 370; William A. Taylor, 'The United Nations', in *The Ashgate Research Companion to the Korean War*, eds. James I. Matray and Donald W. Boose, Jr. (Farnham, Surrey: Ashgate, 2014), 101–02; Denis Stairs, 'The United Nations and the Politics of the Korean War', *International Journal* 25, no. 2 (1970): 302–20.

had also plagued the earlier Allied trials of Japanese suspects after the Second World War,³ but it was more acute in Korea because the conflict did not end when or how Western leaders expected. The delayed finish to the conflict greatly impeded investigators' access to enemy territory and to prisoners of war (POWs) from their own side to enable collection of evidence and apprehension of suspects. Second, U.S. officials rapidly lost confidence in the practicability, usefulness or desirability of bringing charges against national leaders. The failure to prosecute 'crimes against peace', that is, charges of initiating or waging aggressive war,⁴ reflected a growing recognition that pursuit of this charge did not align with the Cold War interests of the U.S. Third, the lack of any clear-cut victory in the conflict led to the need for a diplomatic solution, which was difficult to reconcile with the pursuit of war crimes trials. Fourth, the moral standing of the West, and hence its authority to run war crimes trials, was undermined by the large number of atrocities committed by the UN side (mainly by South Korean forces). U.S. officials never had the relatively uncontested control of news reporting or of propaganda that they had had during the Second World War and in post-war Japan, and atrocities by the anti-Communist side were widely reported. For this combination of reasons, the U.S. plan for war crimes trials was dropped without fanfare, to be replaced by a more targeted propaganda approach aimed at discrediting the Communist side of the Korean War.

Scholarly works have not dealt with preparations for war crimes trials in Korea, or addressed the question of why no formal trials were held.⁵ Using U.S. and British government and military documents, international press articles and secondary sources, this article thus seeks to add a new topic to the literature on the Korean War. One probable reason for the lack of attention to the possibility of prosecutions is that, at least between the 1950s and the 1990s, an absence of war crimes trials after armed conflict appeared unremarkable. Despite optimistic claims after the Second World War that war crimes trials would set a standard for the judgment of breaches of the laws of war in all future conflicts, war crimes prosecutions did not resume until the establishment of the International Criminal Tribunal for the Former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994. Thus, there was no formal reckoning for atrocities committed in the Vietnam Wars of 1946–75, the Indo-Pakistani Wars of 1947, 1965 and 1971, the Arab-Israeli War of 1948–49, the Iraqi-Kurdish Wars of 1961–70 and 1974–75, the Cambodian-Vietnamese War of 1978–89 and many other conflicts. The absence of trials arising from the Korean War therefore was unlikely to present itself as a scholarly problem. From the 1950s on, moreover, crimes committed by the Nazis during the Holocaust, together with those committed by the Japanese military between 1937 and 1945, began to be constructed in scholarly and popular literature as the most evil of all wartime deeds.⁶ Researchers may have assumed that atrocities in other conflicts, including the Korean War, had been less extreme and therefore did not create the urgent need for war crimes trials that had existed after the Second World War.

In Korea itself, the possibility of formal trials during or immediately after the war has attracted little attention. Korea was ruled by repressive regimes from 1948 to 1987 in the South, and from 1948 to the present in the North. Under these circumstances, and also because access to U.S. sources has often been highly restricted, Korean scholars have encountered difficulties in

³Sandra Wilson, Robert Cribb, Beatrice Trefalt and Dean Aszkielowicz, *Japanese War Criminals: the Politics of Justice after The Second World War* (New York: Columbia University Press, 2017), 42–57.

⁴See Article 6 (a) of the Charter of the International Military Tribunal, signed in London, 8 August 1945: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf, accessed 29 April 2021.

⁵An exception is Yang Chŏng-Sim, 'Hankukchŏnchaengki mikunŭi chŏnchaengpŏmchoe chosawa ch'ŏ-li - Chŏnchaengpŏmchoe chosatanŭl chungsimŭlo', *Hankukminchokuntongsayŏnku* 64 (2010): 401–40. This article focusses on U.S. investigations of war crimes. For an English-language synopsis, see <https://www.earticle.net/Article/A129115>, accessed 29 April 2021.

⁶For the Holocaust see Peter Novick, *The Holocaust and Collective Memory: The American Experience* (London: Bloomsbury, 2000). Particularly influential in creating the impression that Japanese military atrocities were morally equivalent to the Holocaust was Lord Russell of Liverpool, *The Knights of Bushido: A Short History of Japanese War Crimes* (London: Cassell, 1958).

conducting empirical research on war crimes. In 2005, the South Korean government established a Truth and Reconciliation Commission to investigate wartime atrocities, as well as earlier human rights abuses from the period of Japanese occupation of Korea. Even in this commission, however, the prospect of identifying and punishing wartime perpetrators was not discussed, probably because of the extreme sensitivity of doing so in the case of a complex civil war.⁷

Atrocities in the Korean War

For Korea, the outbreak of war in 1950 came after decades of colonisation and occupation by foreign forces. Japan had taken control of Korean foreign policy in 1905, and had then annexed the peninsula in 1910. After liberation from Japanese rule in 1945, Korea was divided into zones of occupation, initially in order to facilitate the surrender of Japanese forces. For the next three years, amid growing antagonism between the two powers, the Soviet Union occupied the northern half of the country as far south as the 38th parallel, while U.S. forces occupied the southern half. Moves towards reunification of the peninsula failed, and separate governments were established in 1948. The Republic of Korea (ROK) was proclaimed at Seoul, with Syngman Rhee as its conservative president. In the north, Soviet authorities set up the socialist Democratic People's Republic of Korea (DPRK), with Kim Il Sung as its president. Each state claimed legitimacy over the whole of the peninsula and aimed to reunify Korea on its own terms.⁸ In December 1948, however, the UN officially recognised the ROK as Korea's only legitimate government.

On 25 June 1950, after years of tension on the peninsula, the North Korean People's Army launched a surprise attack against ROK troops across the 38th parallel. A few days later, U.S. President Harry S. Truman committed American troops to assist the ROK forces. The UN Security Council asked UN members to assist South Korea, and in July, the UN Command was formed with U.S. Army General Douglas MacArthur as Commander-in-Chief.⁹ MacArthur continued to serve simultaneously as Supreme Commander for the Allied Powers in the occupation of Japan. In April 1951, President Truman dismissed MacArthur from his positions in relation to both Korea and Japan, after MacArthur had publicly disagreed with Washington's official policy on how to bring the fighting to an end. Meanwhile, the Korean War had grown to include combatants representing seventeen governments operating under the UN flag, including the U.S. and the ROK, although the latter two states provided more than 90% of the military personnel.¹⁰ For DPRK leader Kim Il Sung, who had first secured approval for an attack from both Josef Stalin and Mao Zedong, the conflict was designed to overthrow the South Korean government and reunify the Korean peninsula under Northern control.¹¹ For the multinational force that was UN Command, the war constituted a fierce battle against international Communism.

In the first twelve months, the war front shifted repeatedly and dramatically.¹² The initial North Korean advance was rapid and overwhelming. North Korean forces captured Seoul, the South Korean capital, on 28 June 1950, after which they pushed ROK and U.S. forces far to the south. On 15 September, UN forces under MacArthur's command made an audacious amphibious

⁷Jae-Jung Suh, 'Truth and Reconciliation in South Korea: Confronting War, Colonialism, and Intervention in the Asia Pacific', *Critical Asian Studies* 42, no. 4 (2010): 503–24. I am grateful to Su-kyoung Hwang for guidance on this matter.

⁸Jinwung Kim, *A History of Korea: From 'Land of the Morning Calm' to States in Conflict* (Bloomington: Indiana University Press, 2012), 367–407.

⁹Stueck, *The Korean War*, 10–12, 56.

¹⁰*Ibid.*, 3.

¹¹Hakjoon Kim, 'North Korea', in *The Ashgate Research Companion to the Korean War*, eds. Matray and Boose, 35–47.

¹²This paragraph is based on Stueck, *The Korean War*; Bruce Cumings, *The Korean War: A History* (New York: Modern Library, 2011), 3–35; Wada Haruki, trans. by Frank Baldwin, *The Korean War: An International History* (Lanham, MD: Rowman and Littlefield, 2014); Kim, *A History of Korea*, 407–21; Martin Gilbert, *Descent into Barbarism: A History of the Twentieth Century 1934–1951* (London: HarperCollins, 1998), 865–96, 899–902, 906–7, 910–19.

landing at Incheon (Inchon), on the west coast of the peninsula, near Seoul, in territory held by North Korea. After recapturing Seoul, UN forces crossed into North Korean territory, seizing the capital, Pyongyang, on 19 October. They pushed the North Koreans as far north as the Yalu River, the border with the People's Republic of China (PRC). The fortunes of UN troops were dramatically reversed, however, after hundreds of thousands of Chinese troops, unexpectedly from the U.S. point of view, entered the war on the North Korean side from 25 October 1950. The Chinese and North Koreans forced American and South Korean troops into retreat and drove south to recapture Pyongyang in December. Seoul changed hands for a third time in January 1951 when Chinese and North Korean forces took the city. From February 1951, the Soviet Union gave material and moral support to North Korean and Chinese forces fighting in Korea, though it committed no Soviet soldiers to battle. Nevertheless, UN forces regained the initiative in early 1951, recapturing Seoul, then crossing the 38th parallel and re-entering North Korea. New Chinese offensives were launched against UN forces in April and May 1951, but fighting reached a stalemate.

Armistice negotiations began in July 1951. Mobile warfare stopped, though American bombing missions against Chinese and North Korean positions continued, as did bloody trench warfare. Nearly half of all U.S. casualties occurred in the period after negotiations over a truce had begun. But the front lines changed little after July 1951.¹³ Peace talks were hampered primarily by the complex issues surrounding repatriation of the huge numbers of prisoners held by all parties. Thousands of prisoners held in South Korea were unwilling to return to North Korea or China. On 27 July 1953, an armistice agreement was finally signed by North Korea, China and the U.S. (representing the UN Command),¹⁴ but a formal peace treaty was never concluded.

Investigation teams set up by the U.S. Army soon after the outbreak of full-scale war on the peninsula quickly began to produce evidence that North Korean and, later, Communist Chinese troops were carrying out 'bestial war crimes' against UN and South Korean soldiers, POWs and civilians.¹⁵ Apparent atrocities were also reported in the world press.¹⁶ American officials received reports that 'include, but are not limited to, summary executions, shooting of wounded POWs, death by stoning, clubbing, beating, bayonetting, hanging and burning, shooting of hospital patients, death from air strafing [sic] of unmarked prisoner of war camps, torture and unusual and cruel punishments, needless withholding of medical attention, starvation and desecration of Church property'.¹⁷ Very large numbers of South Korean civilians appeared to have been massacred by northern troops. When North Korean forces took over Seoul in the first days of the war, they rounded up and executed many people as suspected ROK collaborators, including policemen,

¹³Xiaobing Li, 'Military Stalemate', in *The Ashgate Research Companion to the Korean War*, eds. Matray and Boose, 383.

¹⁴The Korean War Armistice Agreement: Panmunjom, Korea, July 27, 1953', https://www.usfk.mil/Portals/105/Documents/SOFA/G_Armistice_Agreement.pdf, accessed 29 April 2021.

¹⁵War Crimes Division, Judge Advocate Section, Korean Communications Zone, 'Historical Report for Period Ending 31 December 1952', 1, National Records and Archives Administration, College Park, MD (hereafter NARA), RG554, Entry A1/1342, Box 220.

¹⁶'Enemy in Full Retreat in South Korea', *The Times*, 29 September 1950, 4; Our Own Correspondent, 'Atrocities in South Korea: Civilians Massacred in Retreat from South', *The Times*, 5 October 1950, 6; '500 South Koreans Murdered by Reds; Guards Slay 6 F.I. Prisoners – Troops Race to Rescue 1,000 American Captives', *New York Times*, 16 October 1950, 1, 4; 'New Atrocity Reported: Army Hears 60 War Prisoners were Slain above Pyongyang', *New York Times*, 22 October 1950, 3; 'Survivors Reveal Red Horror', *Decatur Daily* (Alabama), 23 October 1950, 1; 'U.S. Prisoners Murdered in Rail Tunnel', *Canberra Times*, 23 October 1950, 1; 'Americans Massacred in Korea', *Newcastle Morning Herald and Miners' Advocate* (NSW), 23 October 1950, 1; 'Atrocities by Korean Red Troops: Offenders to Stand Trial', *China Mail* (Hong Kong), 24 October 1950 and 'North Koreans to Pay for Atrocities', *South China Morning Post* (Hong Kong), 24 October 1950, both in UK National Archives, Kew (hereafter NA (UK)), LCO53/159; Our Correspondent, 'N. Korean Army "a Rabble": 25,000 Men Left', *The Times*, 25 October 1950, 3.

¹⁷War Crimes Division, Judge Advocate Section, Korean Communications Zone, 'Information Extracted from Final Historical and Operational Report', 31 May 1954, 3, NARA, RG153, Entry 182, Box 1.

government workers and members of the educated elite, as well as their family members.¹⁸ As UN troops advanced, they found mass civilian graves in other locations. Numbers are difficult to establish, but it is estimated that in the first three months of the war alone, about 26,000 South Korean civilians were murdered.¹⁹ At a single site near Daejeon (Taejon), in central South Korea, 5,000–7,000 bodies were discovered after the North Koreans had retreated from the area in mid-1950.²⁰

Evidence that has come to light since the beginning of the twenty-first century shows that the murders of South Korean civilians cannot simply be attributed to atrocities by the North Korean enemy. All parties murdered ROK civilians. Perhaps the biggest number of killings resulted from local violence among civilians themselves: in a continuation of ideological conflict that predated the war, Dong-Choon Kim writes, private vendettas and violence between leftist and rightist groups resulted in a large number of retaliatory massacres, which were tacitly allowed by local authorities.²¹ American forces also killed a great number of refugees and other civilians in the South, in bombing raids that targeted North Korean troops and guerrillas and sought to destroy facilities that might shelter them. Notable cases included the heavy U.S. bombing of civilians in indiscriminate air attacks, and the No Gun Ri massacre of July 1950, in which American air and ground forces, fearing Communist infiltrators, fired on civilian refugees in a small town in South Korea, killing more than 200.²² ROK authorities murdered large numbers of civilians on their own side. In advance of the arrival of Northern troops, South Korean authorities killed civilians believed to be enemy sympathisers who might reinforce Northern troops. After the withdrawal of Northern troops from the South, civilians were murdered if they were suspected to have collaborated with the enemy.²³ There is great uncertainty about the number of South Korean civilians killed by ROK forces, but current estimates indicate a number of at least 100,000.²⁴ It now appears that the majority of the victims of the mid-1950 massacre at Daejeon were killed by South Korean forces, though North Korean troops also carried out attacks upon their arrival. U.S. troops reportedly witnessed executions of South Korean civilians by ROK forces at Daejeon, photographed them, and even encouraged them.²⁵ Yet, American investigators attributed the deaths to North Korean forces, listing and publicising them as war crimes.²⁶

¹⁸Dong-Choon Kim, trans. by Sung-ok Kim, *The Unending Korean War: A Social History* (Larkspur, CA: Tamal Vista Publications, 2009), 110–18, 166–7.

¹⁹Duane L. Wesolick, 'Atrocities', in *Encyclopedia of the Korean War*, ed. Tucker, 56.

²⁰*Ibid.*

²¹Kim, *The Unending Korean War*, 167–8.

²²Truth and Reconciliation Commission, Republic of Korea, *Truth and Reconciliation: Activities of the Past Three Years*, 69, 75–80. https://www.usip.org/sites/default/files/ROL/South_Korea_2005_reportEnglish.pdf, accessed 17 October 2019. See also Su-kyoung Hwang, *Korea's Grievous War* (Philadelphia: University of Pennsylvania Press, 2016), especially Ch. 5; Kim, *The Unending Korean War*; Dong Choon Kim, 'Forgotten War, Forgotten Massacres – the Korean War (1950–1953) as Licensed Mass Killings', *Journal of Genocide Research* 6, no. 4 (2004): 523–44; Suh Hee-Kyung, 'Atrocities Before and During the Korean War: Mass Civilian Killings by South Korean and U.S. Forces', *Critical Asian Studies*, 42, no. 4 (2010): 573–85; Charles J. Hanley, 'No Gun Ri: Official Narrative and Inconvenient Truths', *Critical Asian Studies* 42, no. 4 (2010): 589–622.

²³Kim, 'Forgotten War, Forgotten Massacres'; Kim, *The Unending Korean War*, 163–4.

²⁴Ashley Rowland and Hwang Hae-Rym, 'Time Running Out on South Korea's Truth and Reconciliation Commission', *Stars and Stripes*, 19 January 2010, <https://www.stripes.com/news/time-running-out-on-south-korea-s-truth-and-reconciliation-commission-1.98156>, accessed 29 June 2020. See also Richard Spencer, 'More than 100,000 Massacred by Allies during the Korean War', *Telegraph*, 29 Dec. 2008, <https://www.telegraph.co.uk/news/worldnews/asia/southkorea/4015742/More-than-100000-massacred-by-allies-during-Korean-War.html>, accessed 7 February 2020; Cummings, *The Korean War*, 201–2; Suh, 'Atrocities Before and During the Korean War', 566–73; Kim, 'Forgotten War, Forgotten Massacres', 524, 532–6.

²⁵Charles J. Hanley and Jae-Soon Chang, 'AP: U.S. Allowed Korean Massacre in 1950', *CBS News*, 5 July 2008, <https://www.cbsnews.com/news/ap-us-allowed-korean-massacre-in-1950/>, accessed 7 February 2020.

²⁶'Historical Report for Period Ending 31 December 1952', 23–4.

American soldiers were also victims of atrocities and mistreatment by the enemy. During the fighting, UN forces in the field found several groups of 30–40 U.S. soldiers who had been captured by the North Koreans and executed on the battlefield; one group of eighty-seven soldiers was rescued just as they were being prepared for execution.²⁷ Survivors later testified that twenty-six American captives, their hands tied behind their backs, had been executed by North Korean troops at Hill 303 above Waegwan in South Korea in August 1950.²⁸ When UN troops advanced into North Korea, they found one group of about sixty-eight executed American prisoners in a railway tunnel near Sunchon; the prisoners had been killed while being transported north from Pyongyang. When Chinese forces entered the war, they were keen to keep prisoners alive for propaganda purposes. But hundreds of Americans died of hypothermia and disease during long marches into captivity, or were killed by their guards because they could not keep up. When they arrived at their destinations, conditions were very poor in the POW camps, which were administered first by the North Koreans and later by the Communist Chinese.²⁹ Of 7,140 Americans captured by Communist forces, 2,701 died in captivity according to U.S. government figures, though some estimates of the death toll are higher.³⁰ The smaller UN contingents suffered correspondingly smaller losses: eighty-two British prisoners are believed to have died in captivity out of a total of around a thousand; one Australian soldier died out of a total of twenty-nine captured.³¹

Announcing trials

From the early stages of the conflict, official pronouncements indicated that U.S. leaders intended to prosecute war crimes, and were determined that the standards they had set in the trials following the Second World War in Europe and Asia would be upheld. In the Asian theatre, a loosely coordinated program of prosecutions had begun in 1945 and ended in 1951. Military authorities of seven Allied countries – the U.S., the Netherlands Indies, Australia, the UK, France, Nationalist China and the Philippines – had tried 5,679 defendants in 2,361 trials set up in fifty-three cities, towns and camps across the region.³² These proceedings were designed to punish specific perpetrators. They also, however, constituted an ‘intensely moral search for justice’;³³ they took their place in the post-Versailles attempt to establish new international standards of behaviour in war, and especially in the attempt to hold armies of occupation to new and higher standards than in

²⁷Cummings, *The Korean War*, 187–90.

²⁸See William Clark Latham Jr, *Cold Days in Hell: American POWs in Korea* (College Station, TX: Texas A&M University Press, 2012), 28–30.

²⁹For first-hand accounts see Lewis H. Carlson, *Remembered Prisoners of a Forgotten War: An Oral History of Korean War POWs* (New York: St. Martin’s Press, 2002).

³⁰*Ibid.*, 2–3.

³¹Philip D. Chinnery, *Korean Atrocity! Forgotten War Crimes 1950–1953* (Shrewsbury: Airlife, 2000), 266; P. J. Greville, ‘The Australian Prisoners of War’, in *Australia in the Korean War 1950–53, Volume II: Combat Operations*, ed. Robert O’Neill (Canberra: Australian War Memorial and Australian Publishing Service, 1985), 533. For an overview of crimes against Americans and South Koreans see, for example, ‘Testimony of James M. Hanley, Colonel, United States Army, Camp Atterbury, IND’, in *Korean War Atrocities: Hearing before the Subcommittee on Korean War Atrocities of the Permanent Subcommittee on Investigations of the Committee on Government Operations, United States Senate, Eighty-Third Congress, First Session, Pursuant to S. Res. 40, Part 3, December 4, 1953* (Washington, D.C.: United States Government Printing Office, 1954), 149–56.

³²Wilson, Cribb, Trefalt and Aszkielowicz, *Japanese War Criminals*, 77–8. The figures given here exclude trials held by the Soviet Union and the PRC. On the national trials see also Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the East, 1945–1951* (Austin, TX: University of Texas Press, 1979); Hayashi Hirofumi, *BC-kyū senpan saiban* (The Class B and C War Crimes Trials) (Tōkyō: Iwanami shoten, 2005); Yuma Totani, *Justice in Asia and the Pacific Region, 1945–1952: Allied War Crimes Prosecutions* (New York: Cambridge University Press, 2015).

³³Kerstin von Lingen and Robert Cribb, ‘War Crimes Trials in Asia: Collaboration and Complicity in the Aftermath of War’, in *Debating Collaboration and Complicity in War Crimes Trials in Asia, 1945–1956*, ed. Kerstin von Lingen (Cham: Palgrave Macmillan, 2017), 14.

earlier times.³⁴ Japanese leaders were brought before the 1946–48 International Military Tribunal for the Far East (IMTFE).³⁵ At the opening of the IMTFE, the Chief Prosecutor, Joseph B. Keenan from the U.S., declared resoundingly that that trial had noble purposes. He stated that a great deal more was at stake than punishing twenty-eight leaders of Japan's war effort. Prosecutors, and perhaps by extension the court and the Allied powers, were 'waging a part of the determined battle of civilization to preserve the entire world from destruction', according to Keenan.³⁶ Japanese leaders, he said, had brought the civilized world to the brink of disaster by waging aggressive war. It was necessary to 'brand' the perpetrators as 'common felons' who deserved and would receive punishment; only then might others in the future be deterred from embarking on a similar path.³⁷ The same lofty ideals lay behind the 1945–46 Nuremberg trial of Nazi German leaders.³⁸ The prosecutions of prominent Axis figures that commenced in 1945 were thus designed to enforce a standard to which all leaders would be held in the future. They were intended both to deter future misconduct in war and to provide a model of how prosecutions should proceed in any future conflict.

The outbreak of full-scale conflict in the Korean Peninsula, just five years after the end of the Second World War and a year and a half after the close of proceedings in the IMTFE, presented an early opportunity to validate the worth of war crimes trials and to reinforce the high ambitions associated with them. From the start, it was clear that U.S. authorities in Korea intended to try both direct perpetrators of war crimes and national leaders, as they had in Japan and Germany. America's allies in Korea were originally expected to join the U.S. effort. The investigation and trial of war crimes was intended to be a UN activity: the trials would be 'the first United Nations war crimes commissions in history'.³⁹ Prosecutions of war crimes suspects were to be conducted by military commissions, as had been the case with Japanese personnel prosecuted in the earlier conflict, apart from the twenty-eight brought before the IMTFE. In Korea, however, the plan was that suspects would be tried under the authority of the UN Command rather than in national tribunals. The commissions would comprise representatives from countries which had contributed to the UN Command in Korea and also the ROK, which was not

³⁴*Ibid.*, 10–11, 15.

³⁵Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (New York: Oxford University Press, 2008); Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War Two* (Cambridge, MA: Harvard University Asia Center, 2008); Richard Minear, *Victors' Justice: the Tokyo War Crimes Trial* (Princeton, NJ: Princeton University Press, 1971); Arnold C. Brackman, *The Other Nuremberg: the Untold Story of the Tokyo War Crimes Trials* (New York: Morrow, 1987); Timothy P. Maga, *Judgment at Tokyo: the Japanese War Crimes Trials* (Lexington, KY: University Press of Kentucky, 2001); David Cohen and Yuma Totani, *The Tokyo War Crimes Tribunal* (Cambridge: Cambridge University Press, 2018); Kerstin von Lingen, ed. *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946–48* (Leiden: Brill, 2018); Viviane E. Dittrich, Kerstin von Lingen, Philipp Osten and Jolana Makraiová, eds. *The Tokyo Tribunal – Perspectives on Law, History, and Memory* (Nuremberg Academy Series No. 3, Brussels: Torkel Opsahl Academic EPublisher, 2020).

³⁶Joseph B. Keenan, 'Opening Statement of the Prosecution', in United States, Department of State, *Trial of Japanese War Criminals, Documents: 1. Opening Statement by Joseph B. Keenan, Chief of Counsel; 2. Charter of the International Military Tribunal for the Far East; 3. Indictment* (United States Government Printing Office: Washington, D.C., 1946), 1.

³⁷*Ibid.*, 3–4.

³⁸Report of Robert H. Jackson, *US Representative to the International Conference on Military Trials, London, 1945*. ([Washington, D.C.]: Department of State, 1949), 49. On the International Military Tribunal at Nuremberg, see Whitney R. Harris, *Tyranny on Trial: The Evidence at Nuremberg* (Dallas, TX: Southern Methodist University Press, 1954); Bradley F. Smith, *Reaching Judgment at Nuremberg* (New York: Basic Books, 1977); Robert E. Conot, *Justice at Nuremberg* (New York: Harper & Row, 1983); Ann Tusa and John Tusa, *The Nuremberg Trial* (London: Macmillan, 1983); George Ginsburgs and V. N. Kudriavtsev, *The Nuremberg Trial and International Law* (Dordrecht: M. Nijhoff, 1990); Telford Taylor, *The Anatomy of the Nuremberg Trials* (Boston: Knopf, 1992); Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York: Viking, 1994); Francine Hirsch, *Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II* (New York: Oxford University Press, 2020).

³⁹'Atrocities by Korean Red Troops: Offenders to Stand Trial'.

yet a UN member.⁴⁰ By the end of the first year of the conflict, cases had been sent to the UN with recommendations that trials go ahead.⁴¹ U.S. officials approached their counterparts in other countries participating in the UN force, anticipating that they would supply judges, prosecutors and investigators, as they had done for the IMTFE, so that the new trials in Korea would be international 'both in spirit and in the personnel which compose them'.⁴² Colonel James J. Hanley, Chief of the War Crimes Section of the U.S. Eighth Army in Korea, was determined that progress would be quick: 'In Germany and Japan the war crime program was measured in years – in Korea it must be measured in months'. He thought the program could be completed in six months.⁴³

The pursuit of war criminals quickly became an American operation, however, for two reasons. The first relates specifically to the ROK. Although the ROK's Ministry of Home Affairs evidently had originally participated in investigations,⁴⁴ American and British authorities came to believe that their South Korean counterparts could not be trusted to deal with suspects in the proper manner. U.S. authorities, Hanley observed, were worried that if their investigators handed over evidence of atrocities against South Koreans to the ROK, they might be 'a party to the summary type of justice prevalent [sic] in the Far East and in this case against persons in . . . custody'.⁴⁵ The second reason is that America's other allies in Korea were not notably enthusiastic about participating in war crimes trials. The French apparently agreed to join in, but the British were not eager.⁴⁶ Although at least one letter to the editor of *The Times* demanded trials of North Korean leaders following the Nuremberg precedent,⁴⁷ some British officials felt that the necessary personnel could not be spared.⁴⁸ The British were also wary of getting entangled in Korean affairs in the longer term. As a press report noted, '[Official] British opinion is stronger than American that it would leave a possibly disastrous impression in Asia if the western Powers proceeded to protracted trials in military courts'. Indeed, there was 'a distinct feeling' that UN forces should withdraw from Korea 'without becoming involved in Korean affairs to anything like the extent suggested' by Americans who wanted to punish North Koreans guilty of atrocities.⁴⁹ To make their participation in war crimes trials even less likely, some British and Australian military authorities doubted the quality of the evidence of atrocities against UN personnel. Wing Commander C. Marshall of the UK Air Ministry considered that there were 'few actual reports of atrocities committed by the Communists against British personnel', that U.S. evidence of atrocities was not sufficiently substantiated, and that 'The Americans generally consider as atrocities

⁴⁰Brigadier General K.B. Bush, Adjutant General, 'Trial of Accused War Criminals', 28 October 1950, and 'Rules of Criminal Procedure for Military Commissions of the United Nations Command', Exhibit 6 attached to War Crimes Division, Judge Advocate Section, Korean Communications Zone, 'Final Historical and Operational Report', 31 May 1954, NARA, RG153, Entry 182, Box 1.

⁴¹See documents in NARA, Adjutant General's Section, Operations Division, Secret General Correspondence 1951, 000.1-000.76, Box 723.

⁴²Colonel George W. Hickman Jr, Command Judge Advocate, to Oliver Bertram, Far East Land Forces, Singapore, 31 January 1951, 1, NA (UK), 'Korea War Criminals', LCO53/159. See also Commanding General, U.S. Eighth Army, to French Military Mission, Tokyo, 7 November 1950, NARA, RG554, Records of General Headquarters, FEC, SCAP, and UNC. Adjutant General's Section, Operations Division. Secret General Correspondence 1950. 000.3-000.92, Box 611.

⁴³Colonel James M. Hanley, Chief, War Crimes Division, Field Memorandum No. 1, 14 November 1950, Exhibit 9 attached to 'Final Historical and Operational Report'.

⁴⁴Colonel James M. Hanley, Chief, War Crimes Section, to Colonel Robert L. Lancefield, Army Staff Judge Advocate, Eighth U.S. Army Korea, 21 February 1952, 5, NARA, RG338, Eighth U.S. Army, 1944–56, Adjutant General Section. General Correspondence 1952: 000.1 to 000.93, Box 507.

⁴⁵*Ibid.*

⁴⁶Hickman to Bertram, 31 January 1951, 2.

⁴⁷R. A. Savory, Letter to the Editor, *The Times*, 4 October 1950, 7.

⁴⁸Hickman to Bertram, 31 January 1951.

⁴⁹'Mr. Truman's Rendezvous with Gen. MacArthur: Vital Talks on Far East Policy', *The Times*, 14 October 1950, 6.

ill-treatment which could be attributed to war conditions or the exigencies of war'.⁵⁰ Australian authorities also expressed doubt about a report of atrocities committed against twenty or so Australian soldiers; in fact, they said, the soldiers had been killed in battle.⁵¹

U.S. authorities began to make arrangements for investigations and trials. On 14 July 1950, less than three weeks after the Korean War had broken out, U.S. Chief of Staff Edward M. Almond stated that the Staff Judge Advocate would be responsible for investigating and preparing for trial 'cases of atrocities and other crimes committed by the enemy in violation of the laws and customs of war in connection with or arising after the beginning of the Korean conflict'. The Staff Judge Advocate would also be responsible for conducting the trials.⁵² A little over a month later, MacArthur, as Supreme Commander of UN forces, warned North Korean leader Kim Il Sung that 'uncontrovertible [sic] evidence has disclosed a series of revolting atrocities committed by North Korean forces upon United Nations prisoners of war', and that if these crimes were not promptly stopped 'I shall hold you and your commanders criminally accountable under the rules and precedents of war'.⁵³

MacArthur's statement echoed two major themes of the earlier trials of Japanese war crimes suspects. First, crimes against POWs were of special importance. The July 1945 Potsdam Declaration, in which the Allies set out terms for Japan's expected surrender, had warned explicitly that 'stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners'.⁵⁴ Many of the trials of Japanese suspects run by national authorities focussed on ill treatment of POWs and civilian internees.⁵⁵ The IMTFE also paid significant attention to such crimes.⁵⁶ Second, MacArthur was determined that commanders, as well as those who had perpetrated crimes directly, would be brought to account. Both the national trials of Japanese suspects and the IMTFE had made use of the relatively new doctrine of 'command responsibility',⁵⁷ in which senior officers were held responsible for crimes committed by their subordinates, on the grounds that they should have taken effective action to prevent the crimes from being committed or, at the least, to punish them if they were committed.⁵⁸ Taken together, Almond's and MacArthur's statements indicated that U.S. leaders in Korea would pay particular attention to POWs, and that they expected to conduct trials of national leaders, of senior commanders and of direct perpetrators of war crimes.

At least through the anticipated trials of national leaders, U.S. officials expressed a belief that prosecutions for atrocities in the Korean War would contribute to the development of

⁵⁰Wing Commander C. Marshall to M. T. Walker, Foreign Office, 15 December 1953, NA (UK), WO208/4005. See also Walker to Marshall, 11 December 1953, in same file.

⁵¹Air Ministry to Sir G. Jebb, 21 November 1953, NA (UK), WO208/4005.

⁵²Major General Edward M. Almond, General Staff Corps, Chief of Staff, 'Investigation and Prosecution of War Criminal [sic]', 14 July 1950, Exhibit 1 attached to 'Final Historical and Operational Report'.

⁵³Douglas MacArthur, Commander-in-Chief, United Nations Command, to Commander-in-Chief, Armed Forces of North Korea, 20 August 1950, Exhibit 3 attached to 'Final Historical and Operational Report'.

⁵⁴'Proclamation by the Heads of Governments, United States, China and the United Kingdom', 26 July 1945, U.S. Department of State, *Foreign Relations of the United States: Diplomatic Papers: The Conference of Berlin (the Potsdam Conference), 1945* (Washington, D.C.: U.S. Government Printing Office, 1945), Vol. 2, 1476.

⁵⁵Wilson, Cribb, Trefalt and Aszkielowicz, *Japanese War Criminals*, 67–103.

⁵⁶Robert Cribb, "'Conventional War Crimes": the International Military Tribunal for the Far East and the Ill-Treatment of Prisoners-of-War and Civilian Internees', in *The Tokyo Tribunal*, eds. Dittrich, Lingen, Osten and Makraiová, 177–99.

⁵⁷On command responsibility see Guénaél Mettraux, *The Law of Command Responsibility* (Oxford: Oxford University Press, 2009); Totani, *Justice in Asia and the Pacific Region*; Gideon Boas and Lisa Lee, 'Command Responsibility and Other Grounds of Criminal Responsibility', in *Australia's War Crimes Trials 1945–51*, eds. Georgina Fitzpatrick, Tim McCormack and Narrelle Morris (Leiden: Brill Nijhoff, 2016), 134–74; L.C. Green, 'Command Responsibility in International Humanitarian Law', *Transnational Law and Contemporary Problems*, 5 (1995): 319–41; W.H. Parks 'Command Responsibility for War Crimes', *Military Law Review* 62 (1973): 1–104; Andrew D. Mitchell, 'Failure to Halt, Prevent or Punish: the Doctrine of Command Responsibility for War Crimes', *Sydney Law Review* 22, no. 3 (2000): 381–410.

⁵⁸Wilson, Cribb, Trefalt and Aszkielowicz, *Japanese War Criminals*, 58–63; Cribb, "'Conventional War Crimes"'.

international criminal law, just as the earlier prosecutions of Japanese and German leaders were supposed to have done. As an official American report produced in December 1952 declared:

it was revealed [in Korea] that the Nuremberg and Tokyo trials did not write 'Finis' to the violations of the rules of warfare, but rather, could only serve as precedents upon which to build an even firmer body of international law in the hope that it may eventually serve as a deterrent against such inhumane activity. . . . The ultimate purpose of these trials [Nuremberg and Tokyo] was to establish an international jurisprudence that might be built upon and serve as a deterrent for those inclined to initiate aggressive wars or commit atrocities. As a similar pattern is revealed in Korea, the opportunity is afforded to follow the legal precedent established, and continue to build the law aimed toward humane conduct and the preservation of peace.⁵⁹

American leaders and officials thus had strong motives to conduct war crimes trials in Korea. As in the earlier pursuit of Japanese and German suspects, securing justice for victims was almost certainly the paramount concern. U.S. authorities had shown a marked commitment to the principle that trials should be held: in the Pacific theatre they had taken the leading role in setting up the IMTFE, and had brought more defendants to court than any other single country in the national prosecutions of Japanese suspects. In this new conflict, too, many officials and leaders appear to have felt a genuine commitment to securing justice for U.S. and South Korean victims of atrocities, and a desire to uphold and extend international criminal law. Investigators were convinced of the widespread nature and the gravity of the crimes that had occurred, and they believed that some crimes ranked with the worst from the Second World War. From September to October 1950, North Korean troops had forced 376 American prisoners to march north to Pyongyang, a distance of 120 miles (195 km). About eighty men died during the two-week journey.⁶⁰ American investigators equated this episode with the notorious Bataan 'Death March' in the Philippines in 1942,⁶¹ although the death toll in Korea was much lower: in the Philippines, an estimated 600–650 American prisoners and an unknown number of Filipinos had died when their Japanese captors forced them to march out of a war zone to a POW camp.⁶² Investigators labelled the massacre near Daejeon of 5,000–7,500 South Korean civilians (according to their estimate) as well as forty-two Americans and seventeen South Korean military personnel as 'murderous barbarism', attributing it to North Korean troops and ranking it with the 'Rape of Nanking' by Japanese forces in 1937–38, and with the crimes committed by Nazi German forces in the Warsaw ghetto.⁶³

The Cold War added an extra, political motive to conduct war crimes trials in Korea. Some officials saw the opportunity to use evidence of war crimes committed by North Korean and Chinese forces as part of a propaganda campaign to reinforce anti-Communist sentiment among ordinary Americans. The desire to expose and publicise Communist atrocities probably increased as the war progressed, especially after the first half of 1952, when North Korean and Chinese authorities stepped up allegations that the U.S. military was engaging in biological warfare.⁶⁴ American accusations of Communist brutality could deflect attention from these allegations. As the U.S. War Crimes Division noted at the end of 1952, 'The information being

⁵⁹'Historical Report for Period Ending 31 December 1952', 1, 4.

⁶⁰Chinnery, *Korean Atrocity!*, 56–61.

⁶¹'Historical Report for Period Ending 31 December 1952', 14–15.

⁶²Stanley L. Falk, *Bataan: The March of Death* (New York: W.W. Norton, 1962), 175.

⁶³'Historical Report for Period Ending 31 December 1952', 23–4.

⁶⁴Robert J. Bunker, 'Biological Warfare', in *Encyclopedia of the Korean War*, ed. Tucker, 77–8; Conrad C. Crane, 'Atomic, Chemical, and Biological Weapons', in *The Ashgate Research Companion to the Korean War*, eds. Matray and Boose, 179–82; Charles S. Young, *Name, Rank and Serial Number: Exploiting Korean War POWs at Home and Abroad* (New York: Oxford University Press, 2014), 66. All these authors note that the claims are highly implausible.

collected and preserved by the War Crimes Division is an invaluable aid in the “cold” war propaganda campaign to prove to the free peoples of the world that it is the Communist enemy, not the United Nations, who is the real perpetrator of atrocities against prisoners of war and civilians.⁶⁵

Evidence of atrocities, especially of crimes against American POWs, led MacArthur and others to call for prosecution of those responsible. When photographs were received of dead American soldiers who had obviously been executed, MacArthur’s office told the Washington government in July 1950 that ‘these acts of barbarism cannot be allowed to pass unnoticed but must be brought before judgment of civilized world as another indication of extreme lengths to which Communism goes in attempt to further its ends’.⁶⁶ Japanese soldiers, too, had been branded as brutal, merciless and uncivilised,⁶⁷ but according to some observers writing after the end of the Korean conflict, the North Korean adversary had exceeded even the earlier Japanese enemy in brutality:

Without exception, in the modern history of US arms, our soldiers have been pitted against enemies possessed of at least some of the elements of decency, humanity and fair play – even under violent combat conditions. The same is not true of the Korean conflict. Here, our troops met an enemy completely devoid of desire to be guided by any rules of warfare other than those observed by the beasts of the jungle.⁶⁸

Already anticipating an end to hostilities,⁶⁹ with UN forces advancing and the PRC not yet in the war, the U.S. military formed a War Crimes Division within the Judge Advocate section in early October 1950 and established teams of investigators to pursue cases. In the second half of 1951, an average of 180 new cases for further investigation were recorded each month. At the end of 1951 and the beginning of 1952, an average of 136 cases per month were still being opened.⁷⁰ Yet, by early 1952 it was no longer obvious that trials would be carried out, and staff investigating war crimes were confused about the purpose of investigations. Direct evidence has not surfaced as to when or exactly why the official determination to stage trials had waned. But investigators were now not sure whether evidence was being collated and interrogations carried out in preparation for actual trials, or whether the mission was ‘the more general one of obtaining, collating, and preserving historical data on that subject [war crimes], without regard to the possibility of trial’.⁷¹ Nor was it certain that all atrocities committed by the North Korean and Chinese side would be investigated by UN Command. American officials discussed what should be done about evidence of atrocities against South Korean, as opposed to American, soldiers – whether such cases should also come before international courts or whether the material should simply be handed over to the South Korean authorities so that they could deal with it directly.⁷² Something had happened in the course of 1952 to undermine the official U.S. determination to stage war crimes trials for atrocities in Korea.

⁶⁵Historical Report for Period Ending 31 December 1952’, 33.

⁶⁶From CINCFE Tokyo to DA Washington, 13 July 1950, NARA, RG554, Adjutant General’s Section, Operations Division, Secret General Correspondence 1950, 000.3-000.92, Box 611.

⁶⁷See, for example, the judge’s comments in Trial of Kishi Yasuo and 14 Others, Hong Kong, March–April 1946, NA (UK), WO235/993.

⁶⁸Information Extracted from Final Historical and Operational Report’, 1.

⁶⁹Historical Report for Period Ending 31 December 1952’, 6.

⁷⁰Hanley to Lancefield, 21 February 1952, 1–2.

⁷¹Letter from Lawrence E. Nobles, Colonel AGC, Adjutant General, Eighth United States Army Korea (EUSAK), ‘War Crimes Activities’, 6 March 1952, NARA, Eighth U.S. Army, 1944–56, Adjutant General Section, General Correspondence 1952: 000.1 to 000.93, Box 507.

⁷²Hanley to Lancefield, 21 February 1952, 5.

Difficulties in finding evidence and suspects

For a start, the collection of reliable evidence and the identification and apprehension of suspects had proved to be extremely difficult. The character and trajectory of the war itself were partly responsible. As we have seen, in October 1950, the U.S. military had already formed a War Crimes Division, expecting an end to hostilities. But the conflict continued as the work of investigating war crimes went on. This circumstance greatly hampered the attempt to build cases against alleged direct perpetrators of atrocities.⁷³ In the Second World War in the Pacific, the Allies had delayed systematic preparation for war crimes trials until after all Japanese forces had surrendered, even though they had had the means and some of the evidence to begin trials earlier. Serious problems in gathering evidence nevertheless confronted investigators after the end of hostilities in 1945: witnesses were scarce, written evidence might have been destroyed, language barriers were an obstacle and the post-war collapse of law and order in some territories made investigation hazardous. On the other hand, some sources of information were relatively readily available, especially former Allied POWs and civilian internees. Crimes against captives held in camps had been committed in fairly stable military conditions, and a great many survivors were available as witnesses. The former captives provided vast amounts of evidence of mistreatment by their Japanese captors, and prosecutions of Japanese military personnel for crimes against prisoners and internees were a mainstay of U.S. trials in Japan after 1945. Relatively few trials, by contrast, were held for crimes committed on the front line, or for large-scale killings of civilians such as those perpetrated by Japanese soldiers in Nanjing, Singapore and Manila.⁷⁴

In Korea, investigators lacked the key additional resource of former prisoners from their own side. In 1951 and 1952, U.S. investigators seldom had access to UN personnel who had been captured by the other side, because the war was still going on and they were still in captivity. The crimes listed in U.S. files as under investigation or ready for trial were predominantly massacres of captured American and South Korean soldiers or of South Korean civilians.⁷⁵ These crimes had been committed in the heat of battle or in difficult circumstances immediately afterwards, leaving few reliable witnesses. U.S. investigators had to rely instead on forms of evidence that turned out to be problematic for various reasons, especially confessions by perpetrators.

The first resource was captured North Korean prisoners, and later, Chinese prisoners. There were plenty of war crimes suspects to interrogate. By 15 December 1950, that is, after six months of war, UN forces had captured more than 145,000 enemy personnel.⁷⁶ After February 1951, the majority of prisoners who had been captured as North Korean or Chinese soldiers and held in other camps were transferred to U.S. custody on Geoje-do (Koje-do), an island 40 km southwest of Busan. War crimes investigators spent most of their time in 1951 and early 1952 questioning these prisoners about atrocities and sometimes extracting confessions.⁷⁷ In the process, they encountered problems familiar from the Second World War. The Korean prisoners, it was reported, were at first quite willing to divulge information. Investigators noted, however, that prisoner and eye-witness reports varied widely in specificity and plausibility, from the 'obviously

⁷³For a description of the War Crimes Division's investigative procedure in Korea see 'Statement of Lt. Col. Jack R. Todd, JAGC, Chief, War Crimes Division, Office of the Zone Staff Judge Advocate, Headquarters, Korean Communication Zone, Korea', in *Korean War Atrocities: Hearing before the Subcommittee on Korean War Atrocities of the Permanent Subcommittee on Investigations of the Committee on Government Operations, United States Senate, Eighty-Third Congress, First Session, Pursuant to S. Res. 40, Part 2, December 3, 1953* (Washington, D.C.: United States Government Printing Office, 1954), 77–86.

⁷⁴Wilson, Cribb, Trefalt and Aszkielowicz, *Japanese War Criminals*, 42–57, 67–103.

⁷⁵See, for example, 'Historical Report for Period Ending 31 December 1952', 14–24.

⁷⁶Special Report to the United Nations Relative to the United Nations Prisoners of War in the Hands of the Enemy, [5 November 1951], NARA, RG554, Adjutant General's Section, Operations Division, Secret General Correspondence 1951, 000.1-000.76, Box 723.

⁷⁷'Historical Report for Period Ending 31 December 1952', 6–8.

falsified' to the 'very accurate'.⁷⁸ An additional problem was that 'many communist prisoners have used several aliases, and some change their names and ranks at will', making it very hard to check the validity of statements.⁷⁹ Prisoner testimony became increasingly difficult to handle. A serious obstacle was that a large number of prisoners came to repudiate their earlier statements and to claim that they had originally given information under duress. Investigators were certain that Communist organisers in the Geoje-do compounds had persuaded them to recant. The problem became so acute that in April–May 1952, war crimes staff ceased working with prisoners on Geoje-do, from April to May 1952.⁸⁰

Investigators were keenly aware in any case that the uncorroborated confession of a North Korean or Chinese POW, or a single statement by a witness, would not form a sufficient basis for a trial. Where possible, they worked with the Graves Registration Office and the Korean police to find additional evidence. Their chief technique, however, was to take a prisoner on a field trip to identify relevant sites and to find witnesses and victims' remains. But just as Allied investigators had found when pursuing Japanese war crimes in Southeast Asia a few years before, the sites of the alleged crimes were often in remote areas that might also be subject to guerrilla activity. Witnesses to atrocities might be scarce, often because over a year had elapsed since the offences had allegedly been committed, and populations had moved in the meantime. It was difficult to find victims' bodies. Wear and tear on vehicles, necessitating time for repair and maintenance, and language barriers, even when interpreters were used, provided further obstacles to efficient investigations. From November 1952, U.S. investigators were no longer permitted to take prisoners on field trips.⁸¹

It soon became evident that choices had to be made as to what kind of offences should take priority and which suspects and crimes could practicably be pursued. A shortage of personnel and of physical facilities to house POWs further limited the U.S. capacity to interrogate prisoners about possible war crimes, and it was ruled that only selected incidents would be fully investigated.⁸² The Chief of Staff of the Army issued a new policy at the end of 1951 that tried to limit full cases to those in which there was more substantial proof than simply the uncorroborated statement or confession of a single prisoner. The Adjutant General Section of the U.S. Eighth Army took the view that investigators should concentrate on cases in which victims included U.S. troops, rather than solely South Korean soldiers or civilians.⁸³

Details of alleged offences continued to be meticulously recorded; cases were then winnowed down to a much smaller number for which there was workable evidence. On 31 December 1952, War Crimes Division files contained 1,643 cases of alleged atrocities, the great majority of them concerning murder of defenceless prisoners or civilians. Legal officers considered that only 265 cases contained evidence sufficient for a trial. Of the remaining 1,378 cases, 1,099 were based solely on the uncorroborated confession of a single prisoner, and the others, too, consisted mostly of single, unsubstantiated statements by an eyewitness, a survivor or someone relating hearsay.⁸⁴ Even if cases could be made, the perpetrator might not be in custody; legal officials did not refer cases for trial in that circumstance. No complete case was made in relation to the 1950 forced march of U.S. soldiers from Seoul to Pyongyang, for example, because no known perpetrators

⁷⁸*Ibid.*, 13.

⁷⁹*Ibid.*, 32.

⁸⁰*Ibid.*, 6–8.

⁸¹*Ibid.*, 6–8, 12, 14–26; Memorandum by Lt Colonel John W. Wiseheart [Chief of War Crimes Division], 12 July 1952, 3–4, Exhibit 21 attached to 'Final Historical and Operational Report'.

⁸²Hanley to Lancefield, 21 February 1952; Report by Col. Lancefield, Army Staff Judge Advocate, EUSAK, 3 March 1952, in same file.

⁸³Lancefield Report, 3 March 1952; Nobles, 'War Crimes Activities'.

⁸⁴'Historical Report for Period Ending 31 December 1952', 27–8.

were in custody.⁸⁵ By the end of 1952, only fifteen cases had been referred for trial, for incidents involving both American and South Korean victims.⁸⁶

Investigations of Japanese crimes had encountered just the same obstacles of lack of witnesses, remote and dangerous locations, and shortages of investigators, and yet they brought large numbers of cases to trial. Despite the troubling difficulties, moreover, some Korean cases were supported by plausible evidence in sufficient quantity. The preferred cases were those for which there was survivor testimony, plus bodies, plus a confession by a prisoner in custody. For the Sunchon tunnel massacre, as one key example, investigators believed they had good evidence. There were survivors, and, according to U.S. investigators, 'The evidence is convincing and confirmed'.⁸⁷ The case was one of the fifteen referred for trial. Practical difficulties, then, cannot fully account for the failure to prosecute: there was also a loss of will from the American side.

Abandoning trials for crimes against peace

From an early point, serious doubts had arisen about pursuit of the high-level charges of initiating or waging aggressive war that would have been used against North Korean leaders. At the end of October 1950, after only four months of war, the English-language Hong Kong newspaper, *China Mail*, was already reporting that only 'conventional' war crimes would be brought to trial, although the article noted that the scope of the military commissions could be extended later if higher authorities decided to indict North Korean leaders on the same charges as had been used in Nuremberg and Tokyo.⁸⁸ Three months later, Colonel George W. Hickman, Command Judge Advocate in the UN Command, told one of his British counterparts that MacArthur did not intend to try anyone for crimes against peace, crimes against humanity or membership in criminal organisations: 'Each accused will be tried solely for specific violations of the laws of war committed by him personally, or under his orders'.⁸⁹

If trials for initiating or waging aggressive war had gone ahead in Korea, they would have been organised by the UN Command, but the U.S. government decided to advise the UN not to run them. The arguments against such trials arose from the logic of the Cold War and from a retrospective view of the value of Nuremberg and Tokyo which stands in marked contrast to the confident declarations at the opening of the IMTFE in 1946. The most articulate opponent of trials for crimes against peace was a State Department expert on Korean affairs, Arthur B. Emmons. Just over three months after war started, Emmons drafted a memorandum on war crimes in Korea. He argued strongly against any plans to try North Korean leaders, on five grounds.⁹⁰

First, the North Korean regime, in his view, 'may be considered as having acted only as an agent of Soviet policy' in engaging in aggressive war. It was not possible to pursue the Kremlin at this stage, and the North Koreans could not be made to take all the blame. Second, North Korean leaders had been duped by Soviet propaganda and hence had not had the chance to learn 'the true picture of the situation existing in the Republic of Korea', presumably meaning that they could not have appreciated that South Korea was (allegedly) free and democratic; once again, by inference, they could not be held fully accountable for going to war against that regime. As a third reason, Emmons argued that trials of North Korean leaders would intensify the existing hatred between North and South Koreans that had been whipped up by Communist propaganda

⁸⁵*Ibid.*, 14–15, 23–4.

⁸⁶*Ibid.*, 14, 32. Details of the cases referred to appear on 14–19.

⁸⁷*Ibid.*, 16.

⁸⁸Atrocities by Korean Red Troops – Offenders to Stand Trial'.

⁸⁹Hickman to Bertram, 31 January 1951, NA (UK), LCO53/159.

⁹⁰Draft Memorandum by the Acting Officer in Charge of Korean Affairs (Emmons) to the Assistant Secretary of State to Far Eastern Affairs (Rusk), Washington, D.C.: 'Department Policy Towards War Crimes in Korea', 10 October 1950, in *Foreign Relations of the United States 1950, Vol. VII, Korea* (United States Government Printing Office: Washington, D.C., 1976), 923–5.

and by the war itself, making it, in turn, much more difficult to achieve the peaceful political unification of North and South Korea that was a U.S. and UN goal at this early stage of the war. This comment was based partly on a view of the effectiveness of the Nuremberg and Tokyo trials that had ended so recently. Although the American involvement in these two large trials did set a precedent for later action, Emmons wrote, the U.S. government was no longer convinced that running the trials had been either 'advisable or successful'. Specifically, some officials speculated that the trials 'may have had an unfortunate effect on our subsequent policy in Germany and Japan'. By this, they seem to have meant that trying enemy leaders had been an impediment to strengthening relations with former enemy countries in the new Cold War conditions that prevailed once peace was restored. Emmons' fourth reason for opposing trials for crimes against peace was that North Korean leaders who had ordered the attack on the South would be the first to flee to the Soviet Union, so the UN forces would not be able to get their hands on them in any case. Fifth, even if such leaders were captured, tried and punished, the effectiveness of such action, presumably meaning the public relations impact, would be limited because people would blame the Russians for the planning and waging of the war.⁹¹

MacArthur himself apparently supported the view that trials for crimes against peace should not be held in Korea. In a meeting with President Harry S. Truman at Wake Island in the Marshall Islands in October 1950, that is, the same month that Emmons wrote his memo from the State Department, MacArthur was asked about policy on war criminals in Korea. He is said to have replied: 'Don't touch the war criminals. It doesn't work. The Nurnberg trials and Tokyo trials were no deterrent'. MacArthur is supposed to have added that the responsibility given him to try 'major' Japanese war criminals, that is, those charged with crimes against peace, was 'the most repugnant task he had ever had to perform'. He may have had some command responsibility trials for ordinary war crimes in mind also, because he added that 'military commanders obey the orders of their governments and have no option about waging war'. On the other hand, MacArthur seems to have intended at this point to run U.S. trials for conventional war crimes. At Wake, he told an official: 'In my own right [that is, not through the UN] I can handle those who have committed atrocities and, if we catch them, I intend to try them immediately by military commission'. For good measure, surprisingly, in view of MacArthur's pride in his ongoing command of the Allied occupation of Japan,⁹² he is also supposed to have said 'Nothing is gained by military occupation. All occupations are failures'.⁹³

Emmons' argument that there should be no trials for crimes against peace was evidently influential. A Directive for the occupation of North Korea, dated 6 November 1950, approved by the U.S. President and transmitted to MacArthur, repeated several of Emmons' points and concluded that the U.S. should not press the UN to hold such trials in Korea.

Without prejudice to any position assumed in the past with regard to the assignment of guilt for the crime of waging aggressive war [a reference to Nuremberg and Tokyo], the U.S. should not propose or support in the UN the holding of war crimes trials in Korea, except those of persons charged with atrocities or violations of the law and customs of war [that is, conventional war crimes].⁹⁴

⁹¹Ibid.

⁹²See, for example, Douglas MacArthur, 'Statement First Anniversary of Surrender', reprinted in Government Section, Supreme Commander for the Allied Powers, *Political Reorientation of Japan, September 1945 to September 1948: Report of Government Section, Supreme Commander for the Allied Powers, vol. 2* (Washington, D.C.: U.S. Government Printing Office, 1949), 756–7.

⁹³Substance of Statements Made at Wake Island Conference on 15 October 1950', in *Foreign Relations of the United States 1950 Vol. VII, Korea*, 949, 954; 'Memorandum by the Assistant Secretary of State for Far Eastern Affairs [Rusk], undated: Addendum to Notes on Wake Conference October 14', in *ibid.*, 961–2.

⁹⁴Draft Memorandum by the Planning Adviser, Bureau of Far Eastern Affairs (Emmerson), (Washington): 'United States Course of Action with Respect to Korea', 6 November 1950, 1064.

In another repudiation of a major U.S. policy in the occupation of Japan, the directive also declared that an individual's membership of the armed forces of the North Korean government, or position as an official of that government or any local government, or membership of any political party, would not bar him or her from office or employment.⁹⁵ In Japan, about 200,000 people had been barred from public office during the early part of the occupation, largely on the basis of the positions they had held during the Second World War.⁹⁶ They included more than 120,000 military men. In October 1951, however, occupation authorities lifted the purge restrictions on all except 5,000 career military personnel.⁹⁷

So the initial plan to prosecute North Korean leaders for crimes against peace was dropped in under six months, because it did not suit the assumptions of the Cold War, or the U.S. Cold War agenda. American officials believed that North Korean sovereignty had been subverted by the Soviet Union; therefore, North Korean leaders could not credibly be held responsible for their actions, even if they could be apprehended. U.S. authorities recognised, moreover, that prosecuting a nation's leaders for war crimes could harm America's post-war agenda, as they now concluded had happened with Japan and Germany. Nevertheless, as MacArthur's comments at Wake Island had also done, the November 1950 Directive for the Occupation of North Korea left the door open for war crimes trials of those suspected of committing atrocities. The directive instructed MacArthur: 'You will apprehend and hold for trial by appropriate tribunals, in accordance with the law and customs of war, all persons who are or may be charged with atrocities or violations of the law and customs of war'.⁹⁸

Prospects of victory evaporate

After the first year of fighting, neither side was confident of victory. The U.S. State Department was preparing for ceasefire negotiations as early as March 1951;⁹⁹ peace talks began four months later. Negotiations reached a stalemate, however, and it was a further two years before an armistice was signed. The war ended in a truce, which was a far cry from the unconditional surrender that the Americans had forced on their German and Japanese enemies just a few years earlier. During the negotiation period, war crimes trials were unlikely to enhance the chances of a diplomatic resolution of the conflict. The ambiguous situation of the negotiations most likely explains the comment made around August 1952 by the Deputy Chief of Staff of the Eighth United States Army in Korea, Brigadier General C. W. Christenberry: 'no War Crimes trials have been held or will probably be held in the near future, in view of the present military situation'.¹⁰⁰

The teams on the ground in the War Crimes Section continued to gather evidence for prosecutions, and a large number of cases continued to be opened or investigated.¹⁰¹ By early 1952, however, more than six months after armistice negotiations had begun, the policy emphasis was no longer on opening new cases.¹⁰² In July 1952, the Chief of the War Crimes Division observed

⁹⁵*Ibid.*, 1061.

⁹⁶On the 'purgues' in Japan see Hans H. Baerwald, *The Purge of Japanese Leaders Under the Occupation* (Berkeley: University of California Press, 1959).

⁹⁷Ivan Morris, *Nationalism and the Right Wing in Japan: A Study of Post-War Trends* (London: Oxford University Press, 1960), 212.

⁹⁸'United States Course of Action with Respect to Korea', 6 November 1950, 1061.

⁹⁹Wada, *The Korean War*, 210.

¹⁰⁰Brigadier General C.W. Christenberry, Deputy Chief of Staff, Eighth United States Army Korea, to Commander-in-Chief, Far East Command, no date but c. August 1952, 1–2, Exhibit 24 attached to 'Final Historical and Operational Report'.

¹⁰¹Hanley to Lancefield, 21 February 1952, 1–2.

¹⁰²Colonel Lawrence E. Nobles, Adjutant General, to Chief, War Crimes Section, 6 March 1952, 1, Exhibit 20 attached to 'Final Historical and Operational Report'.

that ‘Circumstances . . . have precluded the trials; and it does not appear that any are likely in the near future’.¹⁰³ According to the Staff Judge Advocate, war crimes investigations were ‘dormant’, though ‘far from dead’.¹⁰⁴ A radio message at the end of August baldly noted that ‘Trial of war criminals [is] not now authorized’.¹⁰⁵ In September 1953, it was formally decided that charges against Korean and Chinese prisoners still held in U.S. custody and segregated as suspects or witnesses in war crimes would be dropped.¹⁰⁶

The same decision covered North Korean and Chinese prisoners in custody for offences committed while they were in detention, though trials for these crimes, too, had been planned. The withdrawal of permission to try prisoners for post-capture offences was of critical importance in view of the serious disorder that had occurred on Geoje-do, where the U.S. military held about 150,000 enemy prisoners from early 1951 onwards. Significant tension arose between pro-Communist and anti-Communist factions among the prisoners, stoked by a UN-sponsored anti-Communist campaign and by South Korean, Taiwanese and Communist agents. Riots and other protests occurred on several occasions, and by February 1952, more than 6,000 prisoners had died in custody. In May 1952, Communist prisoners captured the camp’s commandant, Brigadier General Francis T. Dodd, holding him hostage for over three days.¹⁰⁷ U.S. military officials prepared cases dealing with murder and other serious crimes on Geoje-do and drafted press releases about them, but the Chief of the UN Armistice Delegation objected because of potential damage to peace negotiations, and further action was suspended.¹⁰⁸

Military officials were not happy about the failure to prosecute suspects either for war crimes or for offences committed in detention. In August 1952, a senior U.S. military officer expressed his concern to MacArthur about the ‘static condition which now exists’ in relation to both sets of planned trials. Given that suspects were already in custody, he felt that delay in bringing them to justice ‘will result in loss of face, provide material for further communistic propaganda, adversely affect disciplinary control and indicate a weakness and indecision on the part of the UNC [United Nations Command]’.¹⁰⁹

Crimes committed by UN forces

Prosecutions of war crimes suspects in Korea were almost certainly hampered by what amounts to a failure of American confidence in the moral authority of the U.S., caused by revelations that war crimes were also being committed by the UN side. War crimes trials of the type pursued against Japanese and German suspects required a faith in the righteous self, as we can see from the early post-war rhetoric cited above about the battle of the civilized world against the forces of destruction. In contrast to the apparent situation in the Second World War, American authorities in the early 1950s were no longer convinced that they themselves were beyond reproach. The North

¹⁰³Wiseheart memorandum, 1, Exhibit 21 attached to ‘Final Historical and Operational Report’.

¹⁰⁴Memorandum by Colonel Lancefield (Staff Judge Advocate), 17 July 1952, 1, Exhibit 22 attached to ‘Final Historical and Operational Report’.

¹⁰⁵Radio message from Commander-in-Chief of UN Command, 26 August 1952, 1, Exhibit 27 attached to ‘Final Historical and Operational Report’.

¹⁰⁶Radio message from Commander-in-Chief, UNC, Tokyo, To CG AFFE MAIN, ‘Change of Action’, 8 September 1953, Exhibit 27 attached to ‘Final Historical and Operational Report’.

¹⁰⁷Stueck, *The Korean War*, 261–262, 276; Latham, *Cold Days in Hell*, 215; Young, *Name, Rank and Serial Number*, Ch. 3; Monica Kim, *The Interrogation Rooms of the Korean War: The Untold History* (Princeton: Princeton University Press, 2019), 171–210; Monica Kim, ‘The Intelligence of Fools: Reading the U.S. Military Archive of the Korean War’, *positions: Asia critique* 23, no. 4 (2015): 716–22.

¹⁰⁸Major General Thomas W. Herren to Commander-in-Chief, United Nations Command, ‘Status of Prisoners of War to be Tried for War Crimes and Post-Capture Offenses’, 19 August 1952, 1, Exhibit 26 attached to ‘Final Historical and Operational Report’.

¹⁰⁹*Ibid.*, 1–2.

Korean and Chinese Communists publicly accused the U.S. of large-scale atrocities;¹¹⁰ U.S. authorities were forced to defend themselves against accusations of biological warfare; and, most important, conspicuously murderous behaviour by South Korean forces was openly reported in the Western press.

At the time, American authorities denied charges that U.S. soldiers had committed atrocities in Korea, but official documents did recognise a few cases, including murder and mistreatment of enemy personnel. One American soldier was court-martialled during the war and sentenced to life imprisonment for killing six North Korean civilians.¹¹¹ Allied personnel had certainly committed war crimes between 1939 and 1945 as well, but their crimes were never officially admitted. At least in the Tokyo Tribunal, evidence that might have indicated illegal actions on the part of the Allies was systematically excluded.¹¹² Communist allegations that the U.S. was using biological warfare in Korea began at the start of the war, and in 1951, Chinese authorities claimed that the Americans had dropped poison gas bombs on their troops. Other accusations included the implausible charge that the U.S. military had waged war against civilians in northeast China and North Korea by releasing infected insects, rodents and other agents to spread disease. Formal accusations that the U.S. had used biological warfare were made by the North Korean Foreign Minister in February 1952 and by the Foreign Minister of the PRC the next month; the Soviet Union supported these charges. The U.S. Defense Department and State Department strongly denied the allegations.¹¹³

For U.S. authorities, accusations against their own forces were dwarfed by the problems of having a very unsavoury ally. Evidence mounted of the large number of atrocities committed by the South Korean Army and police, especially against South Koreans,¹¹⁴ some of which were publicly reported at the time.¹¹⁵ Syngman Rhee's ROK government ordered the execution of thousands of civilians in the South believed to be Communist sympathisers; civilian death-squads also killed many South Koreans. ROK forces killed suspected civilian 'traitors' in the North once they had advanced that far. As we have seen, it is estimated that 100,000 or more South Koreans died at the hands of other South Koreans after June 1950.¹¹⁶

Ample evidence of the killings in the South was available to U.S. and other observers at the time. British soldiers were horrified at the evidence in their area of South Korean mistreatment of prisoners. On one occasion, British troops intervened as a firing squad was in progress. Fifty-eight people condemned to death were due to be shot, including four women, fifty-seven of them for espionage and one for murder. Twenty were shot before the British stopped proceedings.¹¹⁷

¹¹⁰'U.S. Troops Accused of Mass Murder', *Newcastle Morning Herald and Miners' Advocate* (NSW), 31 August 1950, 4; 'North Korean Note to U.N.', *The Times*, 17 April 1951, 4; 'North Korean Charges Against U.N. Forces', *The Times*, 22 November 1951, 4.

¹¹¹Letter from George W. Hickman Jr, Command Staff Judge Advocate, to Colonel Burton F. Ellis, JAGC, Corps Staff Judge Advocate, 20 May 1951, NARA, RG554, Adjutant General's Section, Operations Division, Secret General Correspondence 1951, 000.1-000.76, Box 723.

¹¹²Boister and Cryer, *The Tokyo International Military Tribunal*, 111.

¹¹³Crane, 'Atomic, Chemical, and Biological Weapons', 179, 182; Bunker, 'Biological Warfare', 77; Young, *Name, Rank and Serial Number*, 66.

¹¹⁴Cummings, *The Korean War*, 190; Kim, 'Forgotten War, Forgotten Massacres', 537–8.

¹¹⁵Our Special Correspondent in Korea, 'Seoul After Victory', *The Times*, 25 October 1950, 5; Kurt Hahn, 'Outrages in Korea', Letter to the Editor, *The Times*, 3 November 1950, 5; 'Atrocity in Korea', *Sun* (Sydney), 7 December 1950, 11; Our Own Correspondent, 'Executions in South Korea', *The Times*, 18 December 1950, 6; 'Executions in Korea', *Illawarra Daily Mercury* (NSW), 19 December 1950, 4; Cyril Ebor, 'Atrocities in Korea', Letter to the Editor, *The Times*, 20 December 1950, 7; 'Mass Murder in Korea', *Northern Standard* (Darwin), 22 December 1950, 1.

¹¹⁶Rowland and Hwang, 'Time Running Out on South Korea's Truth and Reconciliation Commission'; Cummings, *The Korean War*, 201–2; Suh, 'Atrocities Before and During the Korean War', 566–73; Kim, 'Forgotten War, Forgotten Massacres', 524, 532–6.

¹¹⁷Telegram, the Ambassador in Korea (Muccio) to the Secretary of State, Seoul, 21 December 1950, in *Foreign Relations of the United States, 1950, Korea, Vol. VII*, 1587.

The UN Command was reported to be deeply concerned by continuing reports of mistreatment of prisoners arrested by ROK forces for political reasons, especially reports of the atrocious conditions in Seoul prisons and mass executions of alleged political prisoners, including women and children, by ROK authorities.¹¹⁸ Writing on behalf of General Matthew Ridgway, who replaced MacArthur as Commander-in-Chief of UN Command in April 1951, an American official complained that the ROK army had been ‘manifestly inadequate’ in punishing its own personnel who mistreated POWs; it was feared that such cases ‘may hereafter subject the United Nations Command to severe censure’, though there was no hint as to where the censure might come from.¹¹⁹ Furthermore, the ROK was not a member of the UN, and ‘Continuation present course [by the ROK] will give Commie propaganda most effective weapon in further splitting already divided views in UN re acceptability ROK as presently constituted’,¹²⁰ an outcome that presumably would have damaged U.S. plans to strengthen the non-Communist camp in the Cold War.

In September 1950, the U.S. military assumed responsibility for all UN prisoners precisely in order to prevent their mistreatment by South Korean forces.¹²¹ But U.S. forces themselves were implicated in some of this mistreatment, at the least by failing to do anything effective to prevent it. American military and diplomatic officials knew about some of the killings and may even have approved of them. Some U.S. officials photographed the events for their own records, reported on them or filed protests.¹²² A British official expressed alarm at the idea that had been mooted from the American side of a committee of enquiry into North Korean and Chinese war crimes, on the grounds that there would be strong demands to investigate atrocities on both sides, and that atrocities committed by Rhee’s troops would come to light.¹²³ Having an ally known for such murderous behaviour must have complicated any plans the Americans still had for running war crimes trials of North Korean and Chinese suspects.

The possibility of U.S. trials for war crimes in Korea receded further as the war drew to a close. The Korean War had not proved to be the kind of conflict, and did not produce the kind of victory, that would have paved the way for post-war trials. There was no glorious or conclusive end to the fighting, producing a clear victor with obvious authority. Moreover, a new and embarrassing public issue had raised its head, further tarnishing the image of the American war effort. U.S. authorities were forced to admit that some American soldiers captured by the enemy had, for whatever reason, agreed to collaborate with that enemy. American POWs had made more than 250 radio broadcasts during the war, calling on fellow Americans to surrender to North Korean forces. Other American soldiers had been persuaded or forced to participate in public demonstrations in Korea against U.S. imperialism.¹²⁴ When soldiers returning to the U.S. were debriefed, officials determined that 13% of them were guilty of serious collaboration with the enemy. Fourteen men were eventually court-martialled for collaboration, and eleven were convicted.¹²⁵ It was alleged that more than seventy-five others had been so thoroughly indoctrinated that they had agreed to act as spies for the Communists in the future.¹²⁶ As Young points out, U.S. soldiers

¹¹⁸From SCAP Tokyo to Department of State, Washington, D.C., 19 December 1950, NARA, RG554, Records of General Headquarters, FEC, SCAP, and UNC. Adjutant General’s Section, Operations Division, Secret General Correspondence 1950. 000.3 – 000.92, Box 611.

¹¹⁹‘Punishment of Personnel Guilty of Mistreatment of Prisoners of War’, undated but after 11 April 1951, 2, NARA, RG554, Adjutant General’s Section, Operations Division, Secret General Correspondence 1951, 000.1-000.76, Box 723.

¹²⁰Acting Secretary of State to Embassy in Korea, 18 December 1950, in *Foreign Relations of the United States 1950 Vol. VII, Korea*, 1567.

¹²¹Latham, *Cold Days in Hell*, 215.

¹²²*Ibid.*, 41; Cumings, *The Korean War*, 173, 176–7.

¹²³UK Delegation to the United Nations, New York, to Foreign Office, 31 October 1953, NA (UK), WO208/4005.

¹²⁴Latham, *Cold Days in Hell*, 19.

¹²⁵Young, *Name, Rank and Serial Number*, 147.

¹²⁶Chinnery, *Korean Atrocity!*, 217–18. Such stories provided the basis for Richard Condon’s novel, *The Manchurian Candidate* (New York: New American Library, 1959), which, in turn, provided the basis for John Frankenheimer’s 1962 movie with the same title.

had collaborated with the enemy in conflicts stretching back to the Civil War and including the Pacific War, but this was the first time that public attention had focussed on the problem.¹²⁷ Public reactions were by no means unified. There was considerable sympathy for the men accused of aiding the enemy: collaboration trials had to be halted because of public opposition to them, and many sentences were later reduced or reversed.¹²⁸ The issue of collaboration, however, ensured that no clear line could be drawn between steadfast, unfailingly patriotic American soldiers and a morally reprehensible enemy that should be brought to account for unacceptable wartime conduct. It also suggested that rather than being self-evidently evil, Communism as an ideology had the force to persuade at least some Americans.

The switch to propaganda

No decision to abandon war crimes trials was announced. By the time hostilities officially ended in 1953, however, U.S officials in mainstream decision-making circles were no longer focussed on pursuing justice for victims. Instead they had seized on war crimes as a propaganda tool to discredit Communism itself. Korean War atrocities were primarily to be used to reinforce 'the American public's will to resist Communism' and to 'increase the fighting heart of our own Military personnel'. Officials believed that the stiffened resolve of Americans, in turn, would encourage people in other nations to join them in resisting Communism.¹²⁹

In December 1953, a United States Senate Subcommittee on Korean War Atrocities was convened.¹³⁰ In its January 1954 report, the Chairman, Senator Charles E. Potter (Republican, Michigan) 'announced that it was the purpose of his subcommittee to show the public the nature of the enemy we fought in Korea'.¹³¹ Twenty-nine carefully selected witnesses gave testimony before the subcommittee, which concluded that 'Virtually every provision of the Geneva Convention governing the treatment of war prisoners was purposely violated or ignored by the North Korean and Chinese forces', and that more than 5,000 American POWs had died because of Communist atrocities (in comparison with the American official estimate of 2,700 POW deaths in captivity¹³²). It recommended that an 'impartial investigating commission of the United Nations' be set up to report on all the facts of the Communist war crimes and on

¹²⁷Young, *Name, Rank and Serial Number*, 86–7.

¹²⁸*Ibid.*, 147–8, 190.

¹²⁹'Department of the Army Plan for Exploiting Communist Mistreatment of U.S. Prisoners of War', no date, Exhibit 50 attached to 'Final Historical and Operational Report', 2, 4.

¹³⁰*Korean War Atrocities: Report of the Committee on Government Operations Made Through its Permanent Subcommittee on Investigations by its Subcommittee on Korean War Atrocities Pursuant to S. Res. 40* (Washington, D.C.: United States Government Printing Office, 1954). https://www.loc.gov/rr/frd/Military_Law/pdf/KW-atrocities-Report.pdf. Records of the hearings are contained in three publications. See *Korean War Atrocities: Hearing Before the Subcommittee on Korean War Atrocities of the Permanent Subcommittee on Investigations of the Committee on Government Operations United States Senate Eighty-Third Congress, First Session Pursuant to S. Res. 40, Part 1, December 2, 1953* (Washington, D.C.: United States Government Printing Office, 1954; https://www.loc.gov/rr/frd/Military_Law/pdf/KW-atrocities-part1.pdf); *Korean War Atrocities: Hearing Before the Subcommittee on Korean War Atrocities of the Permanent Subcommittee on Investigations of the Committee on Government Operations United States Senate Eighty-Third Congress, First Session Pursuant to S. Res. 40, Part 2, December 3, 1953* (Washington, D.C.: United States Government Printing Office, 1954; https://www.loc.gov/rr/frd/Military_Law/pdf/KW-atrocities-part2.pdf); *Korean War Atrocities: Hearing Before the Subcommittee on Korean War Atrocities of the Permanent Subcommittee on Investigations of the Committee on Government Operations United States Senate Eighty-Third Congress, First Session Pursuant to S. Res. 40, Part 3, December 4, 1953* (Washington, D.C.: United States Government Printing Office, 1954; https://www.loc.gov/rr/frd/Military_Law/pdf/KW-atrocities-part3.pdf), all accessed 29 April 2021.

¹³¹Memo re: Executive Session, Subcommittee of the Senate Investigating Committee, Sen. Charles E. Potter (R., Michigan)', 30 November 1953, 2, NARA, RG319, Entry A1 134-A, Box 36, Folder ZA 01 99 77, Korean War Atrocities, Folder 1 of 2.

¹³²Carlson, *Remembered Prisoners of a Forgotten War*, 2–3.

'the means of subjecting the criminals responsible to just and lawful punishment'.¹³³ Evidently the U.S. government no longer had the stomach to undertake the task itself; perhaps officials also knew the UN would not take action, and so could be blamed for the lack of trials, if blame were ever required. In 1955, one knowledgeable observer, the Boston lawyer George Furness, who had worked on the Defence team at the Tokyo Tribunal, pointed out a major contradiction: 'the U.S. authorities continued to hold convicted Japanese war criminals in prison, ten years after the end of the war, yet had not even initiated prosecutions of those suspected of war crimes in Korea, even after thorough investigations of the offences'.¹³⁴

Publicising the enemy's crimes was an important tactic in an extensive anti-Communist diplomatic and media campaign about the Korean War that the State Department and the National Security Council began planning even before the conflict ended. The campaign, which reached a peak in 1953, focussed on alleged Soviet bacteriological warfare and on mistreatment of POWs in Korea, with a heavy emphasis on 'brainwashing'. The State Department disseminated information internationally, targeting especially the General Assembly of the UN. The Army organised domestic publicity about Communist brutality, providing scripts for media appearances and preparing media releases and other materials.¹³⁵ According to the 'Department of the Army Plan for Exploiting Communist Mistreatment of U.S. Prisoners of War', it was necessary for members of the American public to be told in detail about Communist brutality 'so that they will be accurately informed about the brutal, cold blooded character of their enemy'. The fact that some U.S. soldiers had collaborated made the task more urgent: 'Any illusions about any justification for the Communist cause resulting from defection, acceptance of Communist ideology, or collaboration with their captors on the part of a few U.S. prisoners of war must be destroyed'.¹³⁶

The Department of the Army was well aware, however, that there was a downside in issuing extensive publicity about wartime atrocities. Exploiting material on Communist brutality would be made more difficult by the fact that some U.S. soldiers had returned from the conflict as Communists or Communist sympathisers; notwithstanding the official U.S. emphasis on these men as victims of brainwashing, officials feared that the American public might conclude from such cases that Communists were not all bad. Moreover, the U.S. authorities would lose face because of their evident inability to punish the perpetrators of the crimes so graphically described in official publicity.¹³⁷

Conclusion

The circumstances of the Korean War exposed some of the flaws in and limitations of the model of international criminal law that had been so carefully built up after 1940. In relation to direct perpetration of atrocities, first, the conflict in Korea confirmed that the pursuit of war criminals on a large scale, while conceptually straightforward, was fraught with difficulty in practice. The greatest problem in Korea was in finding reliable evidence and identifying and apprehending suspects, an issue that had also loomed large after the Second World War. Second, the Korean conflict dealt a further blow to the idea that one-sided prosecutions for war crimes could be held, a notion that had already been undermined by the Allied trials of Japanese war crimes suspects a few years earlier.¹³⁸ In U.S. planning for prosecutions, only the North Koreans and Communist Chinese were to be blamed for atrocities in Korea. Presumably, in theory, one-sided prosecutions could

¹³³*Korean War Atrocities: Report*, 15, 16.

¹³⁴George A. Furness to Editor, 'Release of Sugamo Prisoners', *Nippon Times*, 21 August 1955, NARA, RG59, C0043, Reel 34, folder: M-2.7 War criminals 1955. Furness argued that the mooted trials for crimes in Korea had been abandoned for political reasons, and that Japanese war criminals, similarly, should be released for political reasons.

¹³⁵Young, *Name, Rank and Serial Number*, 129–34.

¹³⁶'Department of the Army Plan for Exploiting Communist Mistreatment of U.S. Prisoners of War', 1.

¹³⁷*Ibid.*, 2.

¹³⁸Wilson, Cribb, Trefalt and Aszkielowicz, *Japanese War Criminals*, 103, 140.

have gone ahead, as they had done after 1945. The U.S. government, however, did not have the moral and political authority that would have been bestowed by an overwhelming victory. War crimes trials required a clear identification of winners and losers. The Korean War did not qualify in this respect, any more than the Vietnam War did, a few years later. The American government's confidence in its own moral authority in respect of military action was also notably weaker in 1951 than it had been even in 1948, at the end of the Tokyo Tribunal. One reason was the considerable evidence of and publicity for the fact that crimes had been committed also by the UN side. The case of the Korean War shows that when there is evidence of atrocities on both sides, it is very difficult to justify unilateral war crimes trials. Third, the Korean War confirmed the tendency for the legal pursuit of war criminals to become enmeshed with the political goals of one side. In the case of Japanese war criminals, as Wilson, Cribb, Trefalt and Aszkielowicz have argued, political and legal considerations were intertwined at every stage from investigation of crimes to the early release of those convicted.¹³⁹ In Korea, the interrelationship of legal and political goals was highlighted by the waning of official U.S. commitment to war crimes trials once the decision had been made to conciliate the enemy in order to achieve a diplomatic resolution to the conflict.

The abandonment of the original intentions to try North Korean and Communist Chinese leaders for waging aggressive war underlined the fragility of such an enterprise. Charges against national leaders in international courts for the waging of aggressive war have not been used again since 1948. The model of prosecution used in the 1945–48 International Military Tribunals for Japanese and German suspects depended on a war being fought by clearly sovereign states. The Korean War did not fit this model. The Cold War conviction in the U.S. and among its allies that the USSR had controlled North Korean actions meant that the leaders who might possibly have been held to account were not considered fully responsible for their actions. Prosecutions in such circumstances, even if they had been feasible, would have had little credibility.

Under these circumstances, the impetus to stage war crimes trials in Korea dissipated. The fact that it dissipated so soon after the Second World War undermined the argument about deterring future hostilities that had been so prominent in Nuremberg and Tokyo, and implicitly called into question the whole idea of war crimes trials. It showed that the existing model of international criminal law, which was supposed to protect the world forever, was far from the universal tool that it had seemed to be in the late 1940s. It had proved itself to be neither transcendent nor robust.

¹³⁹Wilson, Cribb, Trefalt and Aszkielowicz, *Japanese War Criminals*.