

page 1

Pro Justitia.

No. 72 A/1947

24865/R

Judgment

In the name of the Queen.¹

The Temporary Court Martial [*Temporaire Krijgsraad*] in Batavia in the case of the Army Prosecution Officer [*Auditeur-Militair*], *ex officio*, against

██████████ ██████████,² 45 years old, born in Hiroshima-shi, Japan (1-10-1902), Colonel in the Japanese army, currently detained in Tjipinang prison, in Fort Meester Cornelis.

The order of referral to the Temporary Court Martial by the Army Prosecution Officer dated 22 November 1947 charges the accused as follows:

He, being a subject of the enemy power Japan, committed war crimes in the Dutch East Indies, in the months and on the dates all in 1944, therefore in times of war and in places to be described more specifically below, since, contrary to the laws and customs of war, in the months of March and April 1944, in his position of “*heitan* officer”³ in Semarang, he allowed civilians and soldiers who were subordinate to him to take a group of about 35 women who had already been interned by the Japanese occupation authorities in the camps Semarang-Oost, Gedangan and Halmaheira in Semarang, and camps numbers 4 and 6 in Ambarawa, to the brothels Shoko Club, Semarang Club, Hinomaru and Futabaso⁴ in Semarang, and force them into prostitution and to be raped, while he knew or ought reasonably to have suspected that these war crimes were being committed or would be committed.

These rapes, abduction for enforced prostitution, enforced prostitution and ill-treatment caused severe mental and physical suffering to all, or at least many, of the said women and girls.

¹ Queen Wilhelmina of the Kingdom of the Netherlands, regnant 1890-1948.

² It is understood that the accused in Judgment No. 72A/1947 is Shoichi IKEDA. L.F. DE GROOT, *BERECHTING JAPANESE OORLOGSMISDADIGERS IN NEDERLANDS-INDIE 1946-1949: TEMPORAIRE KRIJGSRAAD BATAVIA* (Art & Research 1990), p 66.

³ Alternatively capitalised throughout the text; for purposes of consistency, “*heitan*” is used. Heitan (兵站) units in the Japanese army were line of communications: rear service and administrative units. GORDON L. ROTTMAN, *JAPANESE ARMY IN WORLD WAR II: THE SOUTH PACIFIC AND NEW GUINEA, 1942-43* (Oxford: Osprey Publishing 2005), p 12.

⁴ The brothel Futabaso is also referred to as “*Seiunso*”; it is so identified on p 13 of Judgment 72/1947.

These offenses were provided for and rendered punishable under Articles 4 *et seq.* of the Criminal Law War Crimes Ordinance, State Bulletin of Acts and Decrees 1946 No. 45.⁵

A writ of service and summons, dated 6 January 1948 cited the accused to appear on 26 January 1948 at 8:30 hours in the morning at the trial of the Temporary Court Martial in Batavia, in session in the building of the Supreme Court of the Dutch East Indies at Waterlooplein Oost No.1.

The decision by the Court Martial dated 4 February 1948,⁶ ordering the admission of the accused [REDACTED] to a lunatic asylum for a maximum period of 6 months, was noted.

The report by J. Ferguson, psychiatric neurologist and the then Medical Director of the Grogol Special Hospital in Batavia, in which he concluded that the accused was not psychotic, was noted.

The decision by the Court Martial dated 23 March 1948, determining that the case against said accused would be continued to Wednesday, 24 March 1948, was again noted.

The demand by the Army Prosecution Officer was read and then submitted to the Temporary Court Martial, to the effect that said Temporary Court Martial should find the accused guilty of committing the war crimes

“Abduction of girls or women for the purpose of enforced prostitution”,
“Enforced prostitution” and “Rape”

and consequently sentence him to death.

The documents of the proceedings, in so far as these were used, were shown and presented to the accused.

The arguments in defence made by the accused and his counsel were considered.

The evidence that had already been given in the judgment against his co-accused was read out and presented to the accused, the brief contents of which are deemed to be inserted here (see pages 12 – 31), and everything

⁵ Ordinance No. 45 Criminal Law War Crimes 1946, available at: <http://www.bataviatribunal.org/?p=324> [accessed 4 October 2014].

⁶ Judgment No. 72/1947, available at: <http://www.bataviatribunal.org/?p=115> [accessed 4 October 2014].

held proved in that judgement was held to be proved here (see pages 31 – 35).⁷

The current enquiry must therefore deal with whether the accused is responsible for these well-proven charges, and if so to what extent.

The accused, at the hearings on 26 and 31 January, and after an interruption due to misbehaviour indicating mental disorders, for which he was ordered to be observed and subjected to a psychiatric examination, stated the following in the principal case at the hearing on 24 March 1948, being heard in response to the charges.

⁷ These page numbers do not correlate to the page numbers of Judgment 72/1947, and may refer to pages of a case file.

page 2

He acknowledges that he was partially responsible for what happened in Semarang as described in the indictment (and found proven with regard to his co-accused in the judgment by the Court Martial dated 24 March 1948).

In Semarang, around January 1944, he was working at the military training school for officers and held the rank of Lieutenant-Colonel – as overall leader of the tactical training for cadets – and directly subordinate to the Commander of the school, Major General [REDACTED]. During a discussion with Colonel [REDACTED], who also worked at the cadets' school, he spoke about the undesirable circumstances in Semarang, in connection with the limited control over the prostitutes in that place, the lack of enough healthy women in the brothels intended for Japanese soldiers that it had been decided to establish and subsequently expand, as well as venereal diseases, after which Colonel [REDACTED] stated that he wanted to make a proposal to General [REDACTED] to achieve improvements, whereupon the accused accompanied [REDACTED] to [REDACTED].

[REDACTED] put his proposal to General [REDACTED] to recruit women from the internment camps and station them in the new brothels that were to be established in Semarang.

General [REDACTED] liked the plan but doubted whether the necessary approval would be granted to remove women from the camps, as these were still under civil administration; such approval would have to be given by the Headquarters of the 16th Army, which was also involved in the establishment of the brothels.

During these discussions, the requirement for voluntary cooperation by the women in question was never mentioned, because this was taken for granted.

The excerpt from his interrogation during investigation 12006/R, dated 11 June 1946, that was shown to him is incorrect with regard to the question: "What was discussed at [REDACTED]'s?", where his response was the opposite of this. Notwithstanding his, the accused's, protest to his interrogator, Mr Schouten, this statement and also several other statements, against which he also protested in vain, remained as part of the interrogation.

However, each time he, the accused, objected to specific parts of the record that were at odds with what he had said, his interrogator said that the differences were not very important and that what was recorded in the report boiled down to much the same. Neither the interrogator nor the

interpreter, a certain [REDACTED], wanted to abandon their point of view that the accused must have known there had been deceit and force involved in the process of taking women from the camps and stationing them in the brothels. Referring to the accused's statements with regard to the above-mentioned conversation at General [REDACTED]'s, the interrogator said that the accused must have known that taking women and girls from the internment camps by force and deceit was against the laws and customs of war. The accused replied that he was fully aware of this and that this is why it was obvious that it had not been discussed, because they had only been thinking about voluntary recruitment.

He also never stated, though it is mentioned in the relevant official report, that he had learned immediately on his return from Tokyo that force had been used.

Nevertheless, he signed the official report, albeit under protest against the incorrect passages referred to above, as he expected he would be able to put things right in court.

The discussion mentioned above took place shortly before his departure for Tokyo, around the end of January 1944.

Meanwhile, during the two weeks or so prior to his departure, he did his utmost to find enough prostitutes among the free population of Semarang, but without satisfactory results.

He was still not fully in agreement with [REDACTED]'s plan, because he anticipated practical problems but, when local recruitment proved unlikely to succeed, he prepared an outline to be presented to the Headquarters, on the instructions of General [REDACTED].

In view of his departure, Major [REDACTED], who had been appointed as his successor, was chosen by Colonel [REDACTED] who was enthusiastic about the plan, to continue elaborating it.

He, the accused, was not involved any further in the matter, but travelled to Batavia with Major [REDACTED] and was aware that Major [REDACTED] was going to Batavia partly to get the approval from Headquarters.

Shortly after his return to Semarang, approximately at the end of March

page 3

1944, at a dinner in Semarang, he heard that the plan had been carried out. He never visited any of the brothels in person, though he did visit Shoko Club's restaurant.

After his return, he never met [REDACTED] again because the latter had returned to his infantry unit. He did not take over the duties of [REDACTED] personally, because Lieutenant [REDACTED] had taken over from him. He, the accused, was too busy to get involved because he resumed his duties as head instructor for the new tactical principles at the military school when he returned – the principles he had studied in Tokyo and that were based on the latest combat experiences.

Moreover, when he had heard that the brothel plan had been carried out, he was not very interested in the matter.

He never heard any rumours that violence had been used against the women who were stationed in those brothels, or that some of them were there involuntarily. He only became aware of these assertions when he saw the indictment in this case.

However, when the order to close the brothels arrived, approximately two weeks after his return, this prompted him to start an investigation and that is why he requested the relevant documents from Lieutenant [REDACTED].

He did not find any written approval from Headquarters among those documents, though he did find the written consent forms from the women. These did not, however, contain any description of the type of work to which they were consenting.

On noticing this, he asked [REDACTED] for an explanation and, when no adequate reply was given, he reported to General [REDACTED] that there was no written approval from Headquarters.

In response to this report, General [REDACTED] said that it was an unpleasant matter. He, the accused, got the impression that [REDACTED] was fully aware of the situation, all the more so as [REDACTED] said, that, perhaps, he would have to send [REDACTED] to Batavia.

However, a few days later, General [REDACTED] went to Batavia himself.

██████████ of the *Kempeitai*⁸ also visited him once around that time, but he was unclear about the purpose of this visit, though prostitution was mentioned and he got the impression that ██████████ had come for information against the other officers at the training school and against General ██████████.

Although he had not been enthusiastically in favour of ██████████'s plan, he had never thought it through enough to appreciate that taking women from internment to station them in brothels – even if they went voluntarily – amounted to a crime against humanity and a violation of international conventions.

Among the group of officers in garrison in Semarang, Colonel ██████████ was Commander of the Infantry unit and a member of the staff at the training school; moreover, he was the eldest and highest in rank and positioned directly below General ██████████. For that reason he had a supreme influence in matters pertaining to the soldiers' well-being, such that he had to be listened to. The brothel plan, which he had initiated and was enthusiastic about, therefore had to be carried out.

He denies guilt with regard to the charges against him in the indictment, in the sense described in the indictment, and in particular to allowing the acts of violence referred to in the indictment, since he had no knowledge of those acts and could not have known about them because he was elsewhere. However, it has now become clear to him that the consequences described in the indictment occurred during the further elaboration of the plan, and he cooperated in setting up that plan. His co-accused have been sentenced in relation to this, and he considers himself jointly accountable for these consequences because he now sees that he might have prevented these consequences if he had advised General ██████████ differently.

Furthermore, he realises that what happened in Semarang was a serious crime against humanity, for which the management at the cadets' school must bear responsibility, so that he, the accused, feels jointly responsible, in spite of his absence when the plans were being carried out and his ignorance of what happened in the course of doing so.

Two matters have therefore been established:

⁸ The *Kempeitai* (憲兵隊) were the secret military police of the Imperial Japanese Army, 1881-1945. WONG HENG, *THE KEMPEITAI* (Singapore: National Library Board, 2004).

page 4

1. the accused participated in formulating and elaborating the plan to establish brothels in Semarang and to use girls and women from the internment camps as prostitutes in these brothels, while also being aware that permission would be sought for this from the Headquarters of the 16th Army in Batavia;
2. upon his return to Semarang from Tokyo (at the end of March 1944), for where he had left at the end of January 1944 to attend a conference where the latest combat techniques were to be discussed, the accused learned about the existence of the brothels as had been planned before his departure, and he also learned that women and girls from the internment camps were working in the brothels.

It has also been established that after his return, on looking into the administrative documents with regard to these brothels, the accused discovered that there was no permission from the Headquarters of the 16th Army and that the statements of consent from the women and girls did not list the type of work they were to do.

General ██████ did not provide him with an explanation in this respect.

Finally, he did nothing more to investigate this.

As has already been held on page 52 of said judgment against the other accused in this case, the mere recruitment of volunteers from the internment camps, using in this process the poor and inhumane circumstances in respect of food and their position in the camps, which they [the accused] had effectively created and maintained, was contrary to morality and humanity and was therefore, in light of the circumstances, a violation of the laws and customs of war.

Therefore the accused – who was also fulfilling the role of a *heitan* officer – by approving a plan of this sort, by participating in the further elaboration of the plan and by failing to check in hindsight how the plan had actually been carried out and how the brothels that had been established on the basis of that plan were operating, must be held liable for the criminal offences committed in the process.

The crimes of war committed by his co-accused according to said judgment certainly resulted from the above-mentioned plan and could and should have been anticipated and prevented by the accused. However, after he returned from Japan and accepted his duties of office again, he allowed the

continued commission of these war crimes when he failed to obtain detailed information with regard to these brothels and related matters.

In his position as a senior officer, he should have been aware that Dutch women and girls would be unwilling, in general and in principle, to leave their internment camps to work as prostitutes in Japanese brothels, and that they would only proceed to do so as a result of deceit and/or force.

Like the other officers involved in this case, he did not care at all about the fate of the women and children who found themselves completely and utterly under the control of the occupation authorities. He did not for an instant consider the fact that even suggesting to these women and girls that they should provide these kinds of services to the Japanese already implied a criminal purport, because of the submissiveness and incarceration into which they had been placed.

By adopting this attitude, he has clearly indicated that he fully agreed with the spirit that prevailed among the leading officers in respect of this brothel situation.

According to the accused's own statement, he noticed that there was no permission from the Headquarters of the 16th Army when he checked the administrative documents regarding these brothels and that the type of work was not described in the statements of consent from the women and girls in question. It was also apparent that, in general, the Japanese attached great importance to concealing – by means of their administration – the actual poor conditions that they had created for their prisoners of war and internees, and also to keeping these concealed from higher authorities. After all, if the accused had appreciated and exercised the duties for which he was responsible as a *heiten* officer correctly, it is inconceivable why he did not immediately start an investigation into the true situation and events after General ██████ had replied to him in an exceedingly unsatisfactory and evasive way.

It follows from the above that the accused

page 5

must be found guilty of the charges against him [*illegible*]⁹ for the crimes referred to therein, in respect of which the offenders have meanwhile been sentenced in terms of the judgment No. 72/1947¹⁰ issued by this Temporary Court Martial.

The following factors relate to the sentence to be imposed.

The Army Prosecution Officer admittedly demanded the death sentence, but the Temporary Court Martial cannot agree to this.

The accused was in fact absent when the plan that was prepared with his cooperation was carried out and he only returned to Semarang when the brothels had already been in operation for a month.

The greatest liability for the war crimes that were committed must therefore be imposed upon those persons who perpetrated them, as was expressed in the judgment that was passed against them.

Nevertheless the accused is highly culpable, because – as an older senior officer and the main and most influential advisor to the Commander, Major General ██████ – he should have obstructed the pressure emanating from the officers' group at the cadets' school to get involved in the establishment of brothels staffed by women and girls from internment camps.

During the trial – so far this could be reconciled with his denials – he appeared to understand this very well and also to realise that this was mainly where his guilt lay.

Therefore the Court Martial – taking account of the fact that the accused focussed his interest and energy on implementing the new guidelines regarding modern combat methods when he returned from Tokyo, which he had to regard as very important in his position as a Japanese officer – deems a sentence of fifteen years to be sufficiently corrective.

Having regard to Article I nos. 6, 7 and 35 of the Criminal Law War Crimes Ordinance, Bulletin 1946 No. 44, 1946 No. 45 and 1946 No. 47 in conjunction with 74,

⁹ This word is unreadable in the source text scan.

¹⁰ Judgment No. 72/1947, available at: <http://www.bataviatribunal.org/?p=115> [accessed 4 October 2014].

DELIVERY OF JUDGMENT

The Court Martial finds the accused referred to at the beginning of this document:



guilty of the war crimes of:

“Abduction of girls and women for the purpose of enforced prostitution”,

“Enforced prostitution” and

“Rape”

and sentences him accordingly to imprisonment for a period of 15 years.

Thus ruled on 30 March 1948 by Lieutenant-Colonel *Mr.*¹¹ J. la Riviere, President, Major *Mr.* L.F. de Groot, and Captain *Mr.* A.J.A. Theijs, Members, in the presence of 1st Lieutenant *Mr.* A. Uyt den Bogaard, Secretary, summarised and sentenced on 20 April 1948.

As witnessed by:

Secretary;
(sgd) A. Uyt den Bogaard

President,
(sgd) J. La Riviere

Members:
(sgd) L.F. de Groot
(sgd) A.J.A. Theijs

¹¹ “*Mr.*”, or in full “*Meester in de Rechten*”, is the Dutch degree of Master of Laws.

On this day, 8 September 1948, the order for execution of the above sentence was granted by me, M.A.F. ZWAGER, Resident,¹² Chief of Temporary Government Service [*Hoofd Tijdelijke Bestuursdienst*] in Batavia.

Resident, Chief of Temporary
Government Service in Batavia,
(sgd.) M.A.F. Zwager

Delivered at the public session of the Temporary Court Martial in Batavia on 11 September 1948, comprising Major L.F. de Groot, President, Captain F.M.F. Claassen, Captain H.W. Heckman, Members; 1st Lieutenant W. Geurts, Secretary, in the presence of the Army Prosecution Officer J. Diephuis, and of the accused and his assigned counsel.

As witnessed by:

Secretary,
(sgd) W. Geurts

President,
(sgd) L.F. de Groot

Certified copy
Secretary,
(sgd) A.V. de Leau

¹² The *Resident* is the authorised representative of a government. Compare this with lowercase “resident”, the head of provincial administration, or a resident. W. MARTIN, G.A.J. TOPS, WILLIAM MARTIN ED. VAN DALE’S GREAT DICTIONARY OF DUTCH-ENGLISH [Van Dale Groot Woordenboek Nederlands-Engels] 3d ed. (1999).