

FORGIVEN AND FORGOTTEN: THE REPUBLIC OF CHINA IN THE UNITED NATIONS WAR CRIMES COMMISSION

Wen-Wei Lai

Abstract

The United Nations War Crimes Commission (UNWCC) was set up in London during the Second World War to discuss war crimes-related issues. China, keen to have a say in any major issues of the war, actively participated in its work. To prove its status as one of the major powers among the Allies, China was particularly interested in establishing a sub-commission in China and extending the jurisdiction of the UNWCC to crimes committed by Japan before the war erupted in Europe in 1939. In Chungking, the Chinese-chaired Sub-commission discussed the treatment of Japanese war crimes, while the Chinese National Office was responsible for gathering relevant evidence. Although the UNWCC is generally thought to be of little relevance to the final arrangement of war crimes trials in Nuremberg, Tokyo, and elsewhere, it is of historical importance in that it was the first forum where war crimes issues were extensively discussed.

Author

J.D., Columbia Law School, 2012; LL.B., National Taiwan University, 2006. I am grateful to the editors of the Columbia Journal of Asian Law for their work. I would like to thank Professor Jonathan Bush for introducing me to archival research and commenting on an earlier draft of this Note. The archivists of Columbia University, Franklin D. Roosevelt Presidential Library, the National Archives at College Park, and the National Archives (United Kingdom) at Kew Gardens were of great help in my research. All errors are my own.

INTRODUCTION	308
I. CHINA AND THE UNWCC AS AN INSTITUTION	308
A. China and the Establishment of the UNWCC	309
B. The Establishment of the Chungking Sub-commission	311
II. ISSUES DISCUSSED IN THE UNWCC OF CONCERN TO CHINA	313
A. The Period Covered by the Investigation	315
B. Substantive Issues	318
1. Crimes Against Humanity	319
2. Crimes Against Peace and the Treatment of the Japanese Emperor	320
3. Quislings	322
III. DISCUSSION IN THE UNWCC ON THE ESTABLISHMENT OF WAR CRIMES TRIBUNALS	323
A. The Establishment of an International Tribunal	324
B. The Discussion of an International Court in Japan	326
IV. THE WORK IN CHINA: NATIONAL OFFICE AND THE SUB-COMMISSION	329
A. National Office	330
B. The Chungking Sub-commission	331
1. Setting Up an Agency in Japan	332
2. The Sub-commission's Work After the Japanese Surrender	333
CONCLUSION	335

INTRODUCTION

A very brief version of the ever-so-familiar story of the post-WWII war crimes trials goes as follows: in late 1944, there were two contrasting views within the U.S. Administration. Treasury Secretary Henry Morgenthau Jr. drafted the so-called Morgenthau Plan, arguing that the arch-criminals should be summarily executed. Secretary of War Henry Stimson, however, thought that war crimes trials would be necessary. Stimson prevailed in the end; during the period June to August 1945, at the London Conference, the United States persuaded the United Kingdom and the U.S.S.R. to participate in such trials. A Pentagon-drafted plan became the basis for the London Agreement of August 1945, which established the International Military Tribunal (IMT) in Nuremberg. Later, the Supreme Commander of Allied Powers in Japan issued a decree establishing the International Military Tribunal for the Far East (IMTFE). The procedural and substantive rules of the IMTFE largely followed those of the IMT. In summary, the United States took the initiative in persuading the United Kingdom and the U.S.S.R. to participate in war crime trials.

Missing from this simplistic picture is China, which suffered most and longest during WWII. In fact, China did try to make its voice heard in 1943. The Allies established the United Nations War Crimes Commission (the UNWCC, or the Commission, or the London Commission) with the primary goal of collecting war crimes evidence. After its establishment, the UNWCC went beyond its original mandate to discuss other war crimes-related issues, such as substantive international criminal law and the establishment of war crimes tribunals. Due to the nature of the UNWCC as an advisory body (and the absence of the U.S.S.R.), however, most of the conclusions reached by the UNWCC did not have a direct influence on the decisions made by the major powers, namely the United States, the United Kingdom, and the U.S.S.R. Despite being marginalized, the UNWCC's work had historical importance, in that it was the first forum during WWII where war crimes issues were systematically discussed.

This Note examines China's participation in the UNWCC, including China's involvement in the establishment of the UNWCC and the Far East and Pacific Sub-commission in China (Part I), China's positions on certain legal issues (Part II), the UNWCC's discussion for the establishment of war crimes tribunals (Part III), and the work in the Chinese National Office and the Far East and Pacific Sub-commission (Part IV).

I. CHINA AND THE UNWCC AS AN INSTITUTION

Since the inception of the UNWCC in London in October 1943, China had been an active participant in its work. At the same time, due to communication difficulties between the Far East and Europe, and a desire to have more influence in dealing with war crimes perpetrated upon its own people, China was also concerned with establishing a panel in China to deal

with Japanese war crimes. In May 1944, it was decided by the UNWCC that a Far Eastern and Pacific Sub-commission would be created in China.

A. China and the Establishment of the UNWCC

Meeting at St. James's Palace in London on January 13, 1942, representatives in exile of nine European countries under German occupation issued a joint statement declaring Nazi atrocities to be in violation of the laws and customs of war (the St. James's Declaration). The signatories of the St. James's Declaration committed themselves to "the punishment, through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them, or participated in them."¹ "Representatives of the United Kingdom, the United States, the Soviet Union, China, the Dominions, and India were present as observers."² The Chinese representative to this conference was Wunsz King.³ According to his description, representatives from the nine European countries sat in a row, while representatives from the United Kingdom, the United States, the U.S.S.R., and China sat across the table.⁴ King saw this arrangement as evidencing China's status as a major international power. After the conference, King issued a Chinese statement, which largely agreed with the principles of St. James's Declaration and claimed that Japanese atrocities would not go unpunished.⁵

In June 1942, Prime Minister Winston Churchill suggested to President Franklin Roosevelt "that a United Nations commission on atrocities be established."⁶ At its meeting on July 6, the War Cabinet accepted the proposal and invited the nine European nations,⁷ China, the United States, the United Kingdom, and the U.S.S.R. to join.⁸ At this stage, China was rather slow in its

¹ MICHAEL R. MARRUS, *THE NUREMBERG WAR CRIMES TRIAL, 1945-46*, at 19 (1997) (citing 1 INTER-ALLIED INFO. COMM., *PUNISHMENT FOR WAR CRIMES: THE INTER-ALLIED DECLARATION SIGNED AT ST. JAMES'S PALACE, LONDON, ON 13TH JANUARY 1942 AND RELATIVE DOCUMENTS 3-4* [1942]).

² ARIEH KOCHAVI, *PRELUDE TO NUREMBERG* 19-20 (1998).

³ Wunsz King was then Chinese Ambassador to several European countries occupied by Nazi Germany during WWII, including the Netherlands, Belgium, Czechoslovakia, Poland, and Norway. He held an M.A. (1919) from Columbia University.

⁴ Jin Wensi (金問泗) [WUNSZ KING], *Waijiao Gongzuo de Huiyi* (外交工作的回憶) [MEMORIES OF MY DIPLOMATIC WORK] 119 (1968).

⁵ *Id.*

⁶ KOCHAVI, *supra* note 2, at 27.

⁷ The nine European countries are Belgium, Czechoslovakia, Greece, Holland, Luxembourg, Norway, Poland, Yugoslavia, and the Free French National Committee. *Id.* at 32.

⁸ *Id.* at 31-32.

response. When the Lord Chancellor in the House of Lords formally announced the plan for a commission, China, together with the Soviet Union, the Dominions, and India, had not responded.⁹ King telegraphed Chungking (the wartime capital of China) for further instructions several times between October 19 and November 26, and suggested that China join the Commission and that it propose a sub-commission in Chungking for the investigation of Japanese war crimes.¹⁰

Meanwhile, the British government pushed hard for a Chinese reply. In late November 1942, the Chinese Foreign Ministry replied that the Chinese government had agreed in principle, while proposing some minor changes, including: (1) "that neutral countries be warned not to afford asylum to any war criminal, whether enemy or puppet," (2) "that provision be made for the surrender of wanted war criminals who take refuge in enemy territory," and (3) "that war criminals should include all persons who have perpetrated atrocities in the territory since September 18th, 1931."¹¹ The Chinese reply, however, was only agreement "in principle," and the British government continued to ask for firmer Chinese support in the first half of 1943.¹²

⁹ *Id.* at 26.

¹⁰ King's proposal was obviously accepted by the Chinese government, since this issue was raised right after the London commission was established in late 1943. Telegram from Wunsz King (金问泗) to Wellington Koo (顾维钧) (Oct. 19, 1942), *available at* Columbia University, Wellington Koo Papers [hereinafter CU, Koo Papers], Box 54, Regarding War Crimes; Telegram from Wunsz King (金问泗) to Wellington Koo (顾维钧) (Oct. 29, 1942), *available at* CU, Koo Papers, Box 54, Regarding War Crimes; Telegram from Wunsz King (金问泗) to Wellington Koo (顾维钧) (Nov. 21, 1942), *available at* CU, Koo Papers, Box 54, Regarding War Crimes; Telegram from Wunsz King (金问泗) to Wellington Koo (顾维钧) (Nov. 23, 1942), *available at* CU, Koo Papers, Box 54, Regarding War Crimes; Telegram from Wunsz King (金问泗) [Wunsz King] to Wellington Koo (顾维钧) (Nov. 26, 1942), *available at* CU, Koo Papers, Box 54, Regarding War Crimes. Columbia University currently holds a collection of correspondences, diaries, and other documents donated by Wellington Koo. The location of the individual documents cited in this Note will be indicated by its box number and folder label. For more information on the Koo Papers, see http://www.columbia.edu/cu/lweb/archival/collections/ldpd_4078997/. Photographs of papers cited in this Article are also on file with the author.

¹¹ Letter from Sir Horace James Seymour, British Ambassador to China, to Foreign Office (Nov. 24, 1942), *available at* United Kingdom National Archives of United Kingdom FO 371/30922, Attitude of Chinese Government to the Treatment of War Criminals file. Note that all references to material in the United Kingdom National Archives are given in short form (NAUK), followed by the group letters, class number, and piece number (e.g., FO 371/30922). File names, if available, are retained in full. The copies of the sources are on file with the author.

¹² In fact, the British Foreign Office seemed to think of the Chinese attitude as an important matter (of course second to the U.S.S.R. and the United States). It can be found in an internal memorandum: "The Chinese are very touchy about being treated as one of the four major allies, and since they are referred to as such in this correspondence I think it would save subsequent illfeeling [sic] and trouble if they were now included in the preliminary consultations." Treatment of War Criminals: Soviet

After the official invitation—which mentioned the possibility of setting up panels in Washington, Moscow, and Chungking¹³—was sent in March 1943, the Chinese asked more questions: (1) “[h]ow are the panels of the commission in Washington, Moscow and Chungking to be constituted and organized,” and (2) “[w]hat are the names and professions of those members serving in the headquarters of the commission.”¹⁴ At that time, all that the British could answer was (1) the establishment of panels should be discussed later in the commission,¹⁵ (2) none of the governments had communicated their choices, and (3) the trouble in finding a suitable person for the commission need not delay the reply “since the question of [a suitable] candidate would be dealt with later.”¹⁶

By the end of the first half of 1943, consensus on the establishment of the Commission had been reached among all the Allies, except the U.S.S.R.¹⁷ The next issue for China was to find a proper representative to the Commission. Back in 1942, Churchill suggested in a War Cabinet internal memorandum that a Dr. Wu could be the Chinese representative,¹⁸ but the memo was largely unnoticed in later developments. In March 1943, when Wellington Koo¹⁹ was

Reply to His Majesty’s Government’s Memorandum of 11th Dec. 1942 (Jan. 27, 1943), available at NAUK, FO 371/34363.

¹³ An internal memorandum within the British Foreign Office indicated: “The Chinese Government are understood to attach importance to Far Eastern war crimes being examined in Chungking, and it might be useful if we were able to secure general acceptance of this concession.” United Nations Comm’n for the Investigation of War Criminals, *United Nations Commission for the Investigation of War Criminals: Allied Government Comments* (Jan. 15, 1943), available at NAUK, FO 371/34363.

¹⁴ Letter from Chinese Embassy to F.K. Roberts, Esq. (Mar. 29, 1943), available at NAUK, FO 371/34363, United Nations Commission for the Investigation of War Criminals: Allied Government Comments file.

¹⁵ For the discussion in the Commission, see *infra* Part I.B.

¹⁶ Letter from Sir Horace James Seymour, British Ambassador to China, to Foreign Office (June 10, 1943), available at NAUK, FO 371/34367, Chinese Representative on the Proposed United Nations Commission for Investigation of War Crimes file.

¹⁷ It must be noted that the absence of the U.S.S.R. was a major one. As later developments in the United Nations War Crimes Commission showed, oftentimes the U.S.S.R. had to be consulted with before the Commission could make a decision.

¹⁸ Memorandum from the War Cabinet on Treatment of War Criminals (July 1, 1942), available at NAUK FO 371/30916. Actually, the Dr. Wu mentioned by Churchill might be Dr. Koo, since the suggested chairman was another statesman, Charles Evan Hughes, the former Judge of the Permanent Court of International Justice, former U.S. Secretary of State, and former Chief Justice of the U.S. Supreme Court. Wellington Koo was probably the only comparable Chinese figure that could be found.

¹⁹ From 1941 to 1946, Wellington Koo was the Chinese Ambassador to the United Kingdom. In his long career as a diplomat, he served as Ambassador to the United States, the United Kingdom, France, and Mexico respectively. He was also Prime Minister once and Foreign Minister several times. He served as the Vice President of the International Court of Justice from 1956 to 1967. He received his B.A. (1908), M.A.

back in China to report to the Chinese government, the Ministry of Foreign Affairs notified him that the British government had sent an invitation to China to nominate its representative to the Commission. Koo told the Deputy Minister that:

In order to show our cooperative spirit, our government might sound out the opinion of the United States government even as regards the question of what kind of representative should be sent . . . so that China might appoint someone similar to the standing of the American representative. If Washington should merely send a technical man, we might appoint Dr. Y. L. Liang, a good lawyer well versed in international law. If the United States should appoint an ambassador other than the American ambassador in London as its representative, we might appoint . . . Ambassador Wunsz King. If the United States should appoint the American ambassador in London, then the ministry might consider appointing the Chinese Ambassador in London.²⁰

In the end, the Chinese government still appointed Koo as its representative, despite the fact that Herbert Pell, the U.S. representative, was only a former U.S. Minister to Portugal and Hungary. On October 20, 1943, the inaugural meeting of the UNWCC was held in London at the British Foreign Office to make arrangements for the establishment of the Commission. China was represented by Koo and Yuen-Li Liang, the international law expert who Koo had recommended.²¹ This conference marked the beginning of Chinese participation in the discussion of war crimes investigation and punishment. Koo raised two issues of particular importance to China: the Japanese crimes committed before the war erupted in Europe, and the establishment of a panel in Chungking.²²

(1909), and Ph.D. (1912) from Columbia University. After his retirement, he donated all his personal papers to his alma mater. The papers were the initial inspiration of the topic of this Note. For more information on the Koo papers, see *supra* note 10.

²⁰ 5 Reminiscences of Vi Kyuin Wellington Koo (Preliminary Draft Form) [hereinafter Koo Oral History], pt. B, 387 (on file with Columbia University).

²¹ Yuen-Li Liang was an international law expert working in the Chinese Embassy in London as a secretary. He was the deputy Chinese representative to the UNWCC. According to Herbert Pell, Koo was not able to come to all the meetings, and usually China was represented by Liang. (Pell mistakenly referred to Liang as Dr. Yung-Chin Yang in his oral history account). See Reminiscences of Herbert Claiborne Pell (Preliminary Draft Form) [hereinafter Pell Oral History] 572 (on file with Columbia University).

²² United Nations War Crime Comm'n (UNWCC), Notes of Meeting: Establishment of Commission 3-4 (Oct. 20, 1943) [hereinafter UNWCC, Notes on Commission Establishment], available at National Archives at College Park (NACP), Record Group (RG) 59, Records of the Legal Advisor Relating to War Crimes file. Note that all references to material in the National Archives at College Park are given in short form

B. The Establishment of the Chungking Sub-commission

The inaugural meeting of the UNWCC was held in October 1943, but the invitations were sent by the British Foreign Office in March of that year. Before any invitations were sent out, the British Foreign Office clarified that the United Kingdom “wanted positions on several matters,” including “the possibility of panels in Moscow and Chungking,”²³ to be coordinated among the United States, the United Kingdom, the U.S.S.R. and China. A memorandum of the British Foreign Office also “indicated that such panels should enjoy the greatest possible degree of autonomous action consistent with the central coordinating functions of the Commission.”²⁴ At the October 20 inaugural meeting, Koo raised the issue of such a panel, but there was no response or further discussion.²⁵ To achieve the goal of setting up a panel in China, Koo made use of his personal connections. Koo and Pell, the U.S. representative, had been friends ever since they were classmates at Columbia College.²⁶ They met in private twice in December 1943,²⁷ right after the start of the UNWCC’s work (according to Pell’s reminiscences, Koo was “one of the most intelligent men Columbia ever graduated,”²⁸ and Koo called Pell “the representative who helped China most in the UNWCC” in a telegram to the Chinese government in Chungking²⁹). In the two meetings, Koo mentioned the Chinese desire to set up a panel in China, with which Pell agreed. Pell wrote in his diary, “[i]t is manifestly impossible to handle the Japanese affair except separately.”³⁰

The formal Chinese proposal, submitted in the meeting of April 25, 1944, read “[i]t is proposed that the War Crimes Commission take up immediately

(NACP), followed by the record group letters. File names, if available, are retained in full. The copies of the sources are on file with the author.

²³ KOCHAVI, *supra* note 2, at 51.

²⁴ UNWCC, HISTORY OF THE UNITED NATIONS WAR CRIMES COMMISSION 129 (2006) [hereinafter HISTORY OF THE UNWCC].

²⁵ UNWCC, Notes on Commission Establishment, *supra* note 22.

²⁶ Pell Oral History, *supra* note 21, at 571.

²⁷ Wellington Koo’s Notes and Statements about Pell (Dec. 2, 1943), *available at* Franklin D. Roosevelt Library, Box 28, War Crimes Commission: Pell file. Note that all references to material in Franklin D. Roosevelt Library are given in short form (RL), followed by the box number. File names, if available, are retained in full. The copies of the sources are on file with the author.

²⁸ Wellington Koo’s Notes and Statements about Pell (Dec. 2, 1943), *available at* RL, Box 28, War Crimes Commission: Pell file; Wellington Koo’s Notes and Statements about Pell (Dec. 10, 1943) *available at* RL, Box 28, War Crimes Commission: Pell file.

²⁹ Telegram from Wellington Koo (顾维钧) to Wang Chung-hui (王宠惠), Secretary-General, Military Affairs Comm’n (Dec. 12, 1944), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

³⁰ Wellington Koo’s Notes and Statements about Pell (Dec. 10, 1943), *available at* RL, Box 28, War Crimes Commission: Pell Notes and Statements file.

the question of the establishment of the Far Eastern Panel or Branch and appoint a special committee to consider and report on the subject."³¹ In his statement, Koo mentioned the March 1943 invitations sent by the British Foreign Office, and said that "[l]ocal panels should enjoy the greatest possible prestige. The Commission would adopt general principles but insofar as local conditions might be different some modifications might be found necessary. Local panels should be able to exercise discretionary power to make modifications provided these were not in contravention with the general principles approved by the Commission."³² The idea of setting up a panel in China was supported by the representatives, and those at the meeting unanimously resolved that a sub-committee under the UNWCC be set up in London to prepare a report on the matters mentioned in Koo's proposal (the Sub-committee).³³

The meeting of the preparatory Sub-committee took place on May 4, 1944.³⁴ Pell nominated Koo to be the chairman of the Sub-committee, and the nomination was unanimously passed. The representatives had no doubt about the establishment of a panel in Chungking, but some thought the panel's authority should be limited. For example, Dutch representative Dr. Jan Maarten de Moor argued that the main work of the panel should be fact-finding, and that it should accept the opinion of the London Commission on legal and enforcement issues. David B. Meek, the Indian representative, thought that the panel should be treated as a branch of the Committee on Facts and Evidence of the UNWCC.³⁵ On the other hand, Koo said the authority of the panel should be greater than that. Pell suggested that the panel should be a sub-commission rather than a committee of the Commission, and his proposal was passed. Thus, it was resolved that the name of the panel be the "Far Eastern and Pacific Sub-commission" (herein, also the Sub-commission, or Chungking Sub-commission).

Another issue was whether states should continue to report crimes committed in the Far East to the Commission. Koo suggested that most cases should go to the Sub-commission, and the Sub-commission must at least be notified if such cases were to be reported to the Commission. The representatives of New Zealand and India, however, suggested that each state

³¹ United Nations War Crime Comm'n, Minutes of Fifteenth Meeting, at 1 (Apr. 25, 1944), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

³² *Id.* at 2.

³³ *See id.* at 5.

³⁴ UNWCC, General Discussion by Committee on the Far East and Pacific (May 8, 1944), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

³⁵ Structurally, the UNWCC was composed of the Committee on Facts and Evidence (Committee I), the Committee on Enforcement (Committee II), and the Legal Committee (Committee III). The separation of powers among the committees, however, is not very clear.

be free to report cases to either London or the newly established panel.³⁶ This issue was left open by the Sub-committee. It was also decided that the Chungking Sub-commission would not preclude the establishment of another panel in the Far East and Pacific area.³⁷ The conclusion of the Sub-committee was adopted by the Commission on May 16.³⁸

II. ISSUES DISCUSSED IN THE UNWCC OF CONCERN TO CHINA

In addition to the establishment of a panel in Chungking, another issue raised by Koo in the UNWCC's inaugural meeting was the fact that China had suffered from Japanese aggression before the start of the European war. The period that the investigation would cover thus became an issue of great concern to China.

As to substantive legal issues, the Chinese position on the following issues will be examined: crimes against humanity, crimes against peace, and the treatment of traitors.

A. The Period Covered by the Investigation

The issue of the period that the investigation would cover had been of primary concern to China since the very beginning. In response to the initial British inquiry in late 1942, China expressed its desire to include atrocities committed since September 18, 1931.³⁹ The United Kingdom, however, was not receptive to the Chinese position. The Foreign Office even blamed the Chinese position, as well as the lack of response from the U.S.S.R., for the delay of the

³⁶ Despite not being represented in the May 4, 1944 meeting, Burma (still a British colony at the time) also expressed its desire to report cases to London in its communication with the British Foreign Office. The idea was supported by the Foreign Office. As an official in the Burma Office within the Foreign Office pointed out, "Relations with the Chinese will be delicate enough after the war without additional embarrassment of this kind [T]he Chinese lay claim to suzerainty over parts of Burma, and further diplomatic difficulties are bound to arise with the Chinese over emigration and kindred matters." The suggestion was to distinguish between British (Burmese) nationals and Chinese nationals, sending only cases about the latter to the Chungking sub-commission. Letter from Burma Office to Foreign Office (July 17, 1944), *available at* NAUK, TS 26/83.

³⁷ In the end, no such panel was set up. Presumably, the purpose of such a panel would be to deal with war crimes committed in the colonies in the Far East and Pacific area, such as Hong Kong (a British colony), Vietnam (a French colony), and Indonesia (a Dutch colony).

³⁸ UNWCC, Notes of Eighteenth Meeting (May 16, 1944), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

³⁹ Letter from Sir Horace James Seymour to Foreign Office, *supra* note 11.

establishment of the Commission.⁴⁰ An internal memo summarized the reasons why the United Kingdom was against the extension of jurisdiction to 1931:

It is proposed to leave this question to be raised by the Chinese representative at the forth coming [sic] meeting with the Allied Governments. It is suggested that we should then take the line that since active fighting did not begin in China as early as September, 1931, we should find it difficult to accept the Chinese proposal. On the other hand we should recognise that fighting had been in progress and that many serious war crimes had been committed in China for more than four years before war was actually declared between China and Japan on the 9th December, 1941. We should propose as a compromise that the date of the actual outbreak of hostilities near Peking, the 7th [of] July, 1937, should be accepted as the deadline for war crimes committed in China. Even this proposal may lay us open to pressure from, for instance, the Czechs who may be tempted to suggest that we should go back either to Munich or to the German entry into Prague in March, 1939. To any such suggestion we should reply that war crimes and atrocities did not in fact take place in Czechoslovakia until after the outbreak of war in Europe in September, 1939, and that troubles between Czechs and Slovaks and Czechs and Ruthenians during March, 1939, should be regarded as an internal Czechoslovak affair.⁴¹

At the inaugural meeting of the UNWCC, Koo argued that China had suffered the consequences of enemy invasion for a much longer time than had any other country represented in the meeting, based on the fact that Japan had started a series of hostilities against China back in 1931.⁴² In fact, it was not the first time the Chinese Government raised the issue. "In response to London's invitation in October 1942 to join the proposed UNWCC, [China] had expressed [its] wish to include as war criminals anyone responsible for atrocities in China since 18 September 1931, the date of Japan's seizure of Manchuria."⁴³ Although the inaugural meeting did not deal with this issue, it was always one of China's primary concerns.

⁴⁰ Letter Regarding Lord Chancellor's Statement on War Criminals of 7th December 1943 to the Chinese Government (Jan. 14, 1943), available at NAUK, FO 371/34363.

⁴¹ United Nations Comm'n for the Investigation of War Criminals, *United Nations Commission for the Investigation of War Criminals: Allied Government Comments* (Jan. 27, 1943), available at NAUK, FO 371/34363.

⁴² UNWCC, Notes on Commission Establishment, *supra* note 22.

⁴³ KOCHAVI, *supra* note 2, at 55.

In September 1944, during the discussion of the establishment of an international court to try war criminals,⁴⁴ China was worried that the jurisdiction of the proposed court might not extend to September 18, 1931. Japan invaded Manchuria in 1931 and set up a puppet regime with the former Emperor of the overthrown Ching Dynasty at its head. A truce followed the invasion, and all-out war between Japan and China did not erupt again until July 7, 1937, when Japan launched an attack on the Beijing suburbs. The 1937 date seemed to be more acceptable to the representatives, and the U.S. Secretary of State instructed Pell to support the 1937 date.⁴⁵ Cecil Hurst, the U.K. representative and the chairman of the UNWCC, also told King⁴⁶ that as regarded China's desire to include crimes committed between September 18, 1931 and July 7, 1937, he "felt great difficulties in acceding to it."⁴⁷ Koo, who was in China, telegraphed King, telling him to make a reservation if the later date was adopted.⁴⁸ The final draft of the Convention did not include a date, and thus there was no need for a reservation.

Two months after Cecil Hurst's discussion with King, at the inaugural meeting of the Sub-commission in Chungking on November 29, 1944, the issue was raised again by the Australian representative:

[E]vents in China prior to December 1941 present a special case which should be made the subject of a special commission concerned with the China incident as a whole and operating separately from the United Nations Commission for the Investigation of War Crimes.⁴⁹

The question was referred to the London Commission because there was a concern regarding the competence of the Sub-commission itself.⁵⁰ In London, Koo secured the support from Cecil Hurst (it was unclear why Hurst changed

⁴⁴ See *infra* Part III.A.

⁴⁵ Letter from State Department to Herbert C. Pell (July 15, 1944), RL, Box 28, War Crimes Commission: State Department file.

⁴⁶ When Wellington Koo was not in London, Wunsz King would take his place, while Yuen-Li Liang was still the deputy representative. Letter from Herbert C. Pell to the Secretary of State (Aug. 24, 1944), *available at* RL, Box 28, War Crimes Commission file.

⁴⁷ Telegram from Wunsz King (金问泗) to Wellington Koo (顾维钧) (Sept. 21, 1944), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

⁴⁸ Telegram from Wellington Koo (顾维钧), to Wunsz King (金问泗) (Sept. 25, 1944), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

⁴⁹ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Inaugural Meeting of the Far Eastern and Pacific Sub-Commission Annex III (Nov. 29, 1944), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁵⁰ *Id.*

his attitude in less than three months).⁵¹ Although the U.S. representative to the Sub-commission still thought July 7, 1937 was preferable, consensus was reached that it was unnecessary to fix the date that marked the beginning of war between China and Japan.⁵² Later, the Commission responded that the "Sub-Commission should not limit its investigations to War Crimes committed after a particular date, and that each case should be considered on its merits."⁵³

One year later, after the IMTFE was established in Tokyo. The IMTFE's prosecutorial branch, the International Prosecution Section, decided that its jurisdiction should cover the war crimes committed since April 1928, when the Japanese assassinated Chinese generalissimo Zhang Zuolin, the warlord whose forces occupied Manchuria.⁵⁴

B. The Substantive Issues

In modern international criminal law, there are four types of core crimes: war crimes, crimes against humanity, crimes against peace (aggression), and genocide. Except for genocide, which was defined in the Genocide Convention of 1948, the other three core crimes were included in the Charters of the Nuremberg and Tokyo trials. Before the Second World War, however, only the general concept of war crimes was firmly established under international law. "War crimes" refers only to atrocities committed by a warring state against the nationals of another warring state. After the German Nazi atrocities against their own Jewish nationals were disclosed, the question of how to punish such crimes under international law became an issue. Hence, the concept of crimes against humanity was created to cover such crimes. Another issue was whether the initiation of war itself should be considered an international crime—it was included in Nuremberg as a crime against peace (although nowadays it is more frequently referred to as aggression), but there was doubt as to its retroactivity. Both crimes against humanity and crimes against peace were discussed in the UNWCC,⁵⁵ and China had its opinions on both core crimes.⁵⁶

⁵¹ Letter from Wellington Koo (顾维钧) to Wang Chong-hui (王宠惠), Secretary-General, Military Affairs Comm'n (Dec. 12, 1944), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

⁵² Letter from Hodgson to the Secretary of State (Feb. 6, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁵³ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Fourth Meeting of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission (Feb. 23, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁵⁴ MEI RUAO (梅汝璈), Yuandong Guoji Junshi Fating (远东国际军事法庭) [THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST] 156 (1988).

⁵⁵ The UNWCC's work, however, did not seem to be the driving force behind the two crimes' inclusion in the Nuremberg and Tokyo Charters. In late 1944, the United States started preparing war crimes trials, and the War Department proposed that the

Also included in the discussion in this section is the issue of quislings (i.e., a state's own nationals who choose to assist an enemy state).

1. Crimes Against Humanity

A hotly debated issue in the UNWCC involved crimes against humanity: should German atrocities committed upon German nationals be treated as any kind of international crime? China was not very positive about this idea. Right after the UNWCC started discussing the definition of "war crimes" in early 1944, Liang stated that he supported a "strict definition." In other words, the definition of war crimes should be restricted to the violation of "the laws of war in the traditional sense," not extending to what are generally understood today as crimes against humanity, the concept of which was only in embryonic phase in 1944.⁵⁷ Even after crimes against humanity were included in the London Agreement of August 8, 1945 that established the IMT in Nuremberg, China, not being a signatory to the London Agreement, was still not very interested in this concept. In January 1946, the UNWCC discussed whether to include crimes against humanity in its investigation, and Liang still took the strict view, arguing that the London Agreement should not apply to crimes committed outside of Europe.⁵⁸ The Chinese government finally decided to endorse the concept after the UNWCC adopted it, despite the abstentions of Liang and several other representatives to the Commission.⁵⁹

persecution of German Jews should be punished as waging aggressive warfare. The War Department proposal became the basis for discussion in the London Conference participated in by the United States, the United Kingdom, the U.S.S.R., and France, which resulted in the Nuremberg Charter. *See generally* PETER MAGUIRE, LAW AND WAR 71-85 (2010).

⁵⁶ It should be noted that the terms "crimes against humanity" and "crimes against peace" were coined only after the London Agreement establishing the International Military Tribunal in Nuremberg. During the discussion in the UNWCC, they were sometimes referred to as "atrocities committed on its own nationals" and "initiation of an aggressive war." For the purpose of convenience, however, I will use the two technical terms in the following discussion.

⁵⁷ Letter from Lawrence Preuss, Assistant to the American Representative on the United Nations Comm'n for the Investigation of War Crimes, to Durmrd V. Sandifer (Mar. 13, 1944), *available at* RL, Box 28, War Crimes Commission: State Department file.

⁵⁸ Telegram from Wellington Koo to Ministry of Foreign Affairs (Jan. 10, 1946), *available at* CU, Koo Papers, Box 54, Regarding War Crimes; Telegram from Wellington Koo to Ministry of Foreign Affairs (Feb. 1, 1946), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

⁵⁹ Telegram from Wellington Koo to Ministry of Foreign Affairs (Feb 1, 1946), *available at* CU, Koo Papers, Box 54, Regarding War Crimes; Telegram from Ministry of Foreign Affairs to Wellington Koo (Feb. 14, 1946), *available at* CU, Koo Papers, Box 54, Regarding War Crimes. By then, the Charter of the IMTFE had been issued, and crimes against humanity were included in the jurisdiction. Therefore, there was no reason for China to continue objecting.

The lack of interest on the Chinese part in crimes against humanity led to a tragic result: crimes committed in Taiwan (a Japanese colony from 1895 to 1945), such as forcing women to become “comfort women,” were ignored. On January 14, 1947, the Sub-commission decided that “war crimes committed against Formosans [Taiwanese] should not be dealt with by the Sub-Committee because at the time when the war crimes were committed such Formosans were still Japanese subjects.”⁶⁰ According to the War Criminal Arrangement Regulations adopted by the Ministry of National Defense, Taiwanese residents regained their Chinese citizenship on October 25, 1945. A Taiwanese resident who committed a war crime before that date would be treated as a war criminal. As to the crimes committed by the Japanese in Taiwan before that date, an ordinary civil proceeding would be used.⁶¹ In other words, a Taiwanese resident, prior to October 25, 1945, was treated the same as the Japanese. As a result, crimes committed by the Japanese against the Taiwanese went almost totally unnoticed. More than sixty years after the war, the issue of “comfort women” still haunts the relationship between Japan and Asian countries including Korea and Taiwan.

2. Crimes Against Peace and the Treatment of the Japanese Emperor

China took a broader view on crimes against peace. In September 1944, the majority report of the Legal Committee of the UNWCC “expressed the view that ‘acts committed by individuals merely for the purpose of preparing for and launching aggressive war, are, *lege lata*, not ‘war crimes.’”⁶² A minority report, prepared by the Czech representative, Dr. Bohuslav Ečer, took the opposite view and argued that “aggressive war [was] a criminal act, entailing individual liability.”⁶³ In the discussion of October 10, 1944, the minority report was supported by delegates of Australia, China, New Zealand, Poland, and Yugoslavia. King opined that the majority report “while sound in theory, was too narrow and legalistic and lagged far behind the movement of enlightened public opinion . . . unless the authors of German and Japanese wars of aggression were duly punished, the efforts to punish the war criminals would have no deterring effect . . .”⁶⁴

⁶⁰ UNWCC, Far Eastern & Pacific Sub-Comm’n, Minutes of the Thirty-Sixth Meeting of the Far Eastern and Pacific Sub-Commission (Jan. 14, 1947), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁶¹ Nanjing Shenpan (南京审判) [*Nanjing Trials*], in 24 Nanjing Datusha Shiliaoji (南京大屠杀史料集) [SELECTED SOURCES ON THE MASSACRE OF NANKING] 29 (Hu Jurong [胡菊蓉] ed., 2006) [hereinafter *Nanjing Trials*].

⁶² KOCHAVI, *supra* note 2, at 98.

⁶³ *Id.* at 98–99.

⁶⁴ UNWCC, Notes of Thirty-Fifth Meeting (Oct. 10, 1944), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

The Chinese perspective stemmed from its determination that arch-criminals should not go unpunished. Prior to discussing the majority and minority reports, the Commission had debated the issue of arch-criminals on September 26, 1944. The Dutch representative, Jan Maarten de Moor, maintained that the Commission's responsibility for dealing with the arch-criminals was unrestricted. King supported de Moor's proposal, stating that "[h]e was most anxious that men like [Emperor] Hirohito and [Prime Minister] Tojo [(1941-1944)] should not go unpunished."⁶⁵ King's statement may reflect what was perhaps the prevailing opinion in China at that time. In 1943, a Chinese politician published an article stating that "the emperor and the cult of emperor worship must be swept away by the Allies"⁶⁶ According to a study prepared by the U.S. embassy in China, "[the Chinese politician] [was] said to have expressed views which [were] widely held in China."⁶⁷ Just half a month before the surrender of Japan, the People's Political Council "passed a resolution designating the Japanese Emperor as a war criminal."⁶⁸ Though the People's Political Council is only an advisory body whose members were appointed by the Chinese government and is not a democratically elected parliament, its representatives from different sectors of the Chinese society still, to a certain degree, reflected the general public opinion.

The desire to punish the Japanese Emperor was shared by other Allied countries as well. Reuters reported on April 11, 1945, that "[i]t appears to have been virtually settled that the Japanese Emperor Hirohito will be placed on the list of Japanese war criminals as a result of the talks on this subject among the Dominions representatives and the British Government"⁶⁹ The U.S. embassy in China also expected that the topic would be brought up in the Chungking Sub-commission.⁷⁰ In the end, however, Emperor Hirohito was not tried because General Douglas MacArthur thought that if Hirohito "were tried like a common criminal, the United States would need a million additional troops to restore order."⁷¹ This argument was not without its supporters in

⁶⁵ UNWCC, Notes of Thirty-Third Meeting (Oct. 26, 1944), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁶⁶ Chinese Views Regarding the Post-War Treatment of Japan 31 (Feb. 22, 1945) [hereinafter Chinese Views Regarding the Post-War Treatment of Japan], *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁶⁷ *Id.*

⁶⁸ Letter from U.S. Ambassador Patrick Hurley to Secretary of State (July 28, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁶⁹ *Hiroshito's Name on Crime List Urged at Conference in London*, CHRISTIAN SCI. MONITOR, Apr. 11, 1945, *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

⁷⁰ Letter from U.S. Ambassador Patrick Hurley to Secretary of State, *supra* note 68.

⁷¹ MAGUIRE, *supra* note 55, at 102-03.

China, but it does not seem to have been the majority opinion among the Chinese public.⁷²

3. Quislings⁷³

As for the surrender of war criminals, the exiled Ministers of Justice from five Allied governments—Belgium, France, Luxembourg, the Netherlands, and Norway—prepared a Draft Convention of the Ministers of Justice (the Draft). The Draft included provisions for the handing over of traitors in addition to war criminals.⁷⁴ The Draft was presented to the Commission in early 1944.⁷⁵ Based on the Draft, Liang prepared a new Draft Convention (the Liang Draft Convention) for the Surrender of War Criminals and Other War Offenders, which revised the Draft.⁷⁶ The Liang Draft Convention retained the surrender of quislings as a goal, while defining “quislings” broadly as:

Persons, nationals, or former nationals, of the requesting State who are charged with or convicted of giving aid or comfort to the enemy or of an offense committed with the intent to further the cause of the enemy or of an offense committed by means of the power or opportunity afforded by a state of war or armed hostilities or by hostile occupation of territory of the requesting State.⁷⁷

The Liang Draft Convention was adopted by the Commission on August 29, 1944, with a few reservations made by some representatives; however, none of the reservations related to the definition of quislings.⁷⁸

In China, the attitude toward the punishment of quislings was mixed. After Japan occupied Nanking (the peacetime capital of China), Wang Ching-Wei, the vice chairman of the ruling Nationalist Party, chose to leave the Chinese government, which had relocated to Chungking, and collaborate with the Japanese. Wang set up a puppet regime in Nanking and claimed it to be

⁷² Chinese Views Regarding the Post-War Treatment of Japan, *supra* note 66, at 31.

⁷³ The term “quislings” means traitors. It derived from Vidkun Quisling, a Norwegian politician who, with the German invasion of Norway in progress, seized power in a Germany-backed coup. Joachim Joesten, *Scandinavia in the New Order*, 19 FOREIGN AFF. 818, 819 (1941).

⁷⁴ HISTORY OF THE UNWCC, *supra* note 24, at 394.

⁷⁵ *Id.* at 395.

⁷⁶ *Id.* at 397.

⁷⁷ *Id.*

⁷⁸ Notes of Twenty-Ninth Meeting, at 2 (Aug. 29, 1944), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

the legitimate Chinese government.⁷⁹ Due to Wang's high reputation in China, the Chungking government initially avoided discussing harsh punishments for Wang and his followers. In 1943, a high-ranking Chinese official stated "he hoped and expected that after the war the Chinese Government would issue a mandate of general amnesty for Chinese puppet officials in the occupied areas."⁸⁰ On March 10, 1944, a Chinese official told the Counselor of the American Embassy that "it was difficult to say whether Wang Ching-Wei was really a war criminal or a traitor."⁸¹

In November 1944, Wang died in Tokyo, and his deputy, Chen Kung-Po became the chairman of the Nanking government. Several influential Chungking newspapers expressed regret that Wang could no longer be punished for his treason. According to the American Embassy report published early 1945, "it is not unlikely that in the end the others will be forgiven."⁸² After the Japanese defeat, Chen escaped to Japan. The Chinese government issued an arrest warrant and extradition request, and Chen was extradited back to China. In 1946, he was convicted of treason and executed.⁸³

III. DISCUSSION IN THE UNWCC ON THE ESTABLISHMENT OF WAR CRIMES TRIBUNALS

Shortly after its establishment, the UNWCC started working on the possible establishment of tribunals to try war criminals, including a treaty-based international criminal court, and military tribunals in Allied-occupied areas. After the Japanese surrender, the UNWCC also discussed the trials of Japanese war criminals. Such discussion and conclusions reached by the Commission, however, were largely unheeded in the post-war agreements by the major powers. China, excluded from the ranks of the United States, the United Kingdom, and the U.S.S.R., was dissatisfied with the final arrangements.

⁷⁹ This somewhat differed from the situation in the occupied European countries, as the legitimate Chinese government still existed in Chungking, China when the Nanking puppet regime was set up in 1940.

⁸⁰ Chinese Views Regarding the Post-War Treatment of Japan, *supra* note 66, at 17.

⁸¹ Hiroshito's Name on Crime List Urged at Conference in London, *supra* note 69.

⁸² Chinese Views Regarding the Post-War Treatment of Japan, *supra* note 66, at 18.

⁸³ WANG HAILONG (王海龙), Geda yu Xiandai Zhongguo (哥大与现代中国) [COLUMBIA UNIVERSITY AND MODERN CHINA] 196 (2002). Chen Kung-Po received his M.A. from Columbia University in 1924.

A. The Establishment of an International Tribunal

The UNWCC, from its earliest stages, was concerned with the question of establishing an “international criminal court.”⁸⁴ On February 22, 1944, the Commission gave authority to Committee II (the Committee on Enforcement) to begin discussions on the subject without delay.⁸⁵ In the February 25 meeting of Committee II, Liang stated that he “believed a court would be necessary.”⁸⁶ A clearer statement of the Chinese position is found in the discussion on April 26:

The Chinese Government believes that certain criminals who have committed supranational crimes should be tried by international courts. There would be very few cases, as far as China is concerned, where a person would be accused of committing an offense against more than one nation, but China still wants its part in trying such cases.⁸⁷

In other words, although China supported the establishment of an international court, its support was likely based on the desire to ensure that it would wield influence in the trials of major war criminals and war criminals who committed acts against China and its nationals, rather than any deep-rooted belief in such a court. This would be consistent with China’s position on two other issues: the establishment of a prosecutorial office for the international criminal court and the establishment of mixed military tribunals in the Allied-occupied areas.

Regarding the prosecutorial office, two options were suggested for prosecutions before the proposed international criminal court: (1) prosecution

⁸⁴ In the UNWCC’s discussion, an “international criminal court” meant an ad hoc, treaty-based tribunal trying war criminals after World War II. In contrast, the modern International Criminal Court (ICC) is a permanent institution, created by the Rome Statute (signed in 1998 and beginning in 2002). Some members of the UNWCC hoped that such a treaty court would have been “a forerunner of a permanent international court,” but the hope was not shared by major members such as the United States and the United Kingdom. See KOCHAVI, *supra* note 2, at 117. It is also evidenced by Article 27 of the final Draft Convention, which stated that “the Court shall be wound up” after the trial of persons who were brought before it for offences within its jurisdiction have been completed. Convention for the Establishment of a United Nations Joint Court (Draft Presented by Committee II), art. 27 (Sept. 22, 1944), available at NAUK, TS 26/69.

⁸⁵ UNWCC, Notes of Tenth Meeting, at 2 (Feb. 22, 1944), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

⁸⁶ Letter from Pell to U.S. Secretary of State, Notes of the Meeting of the War Crimes Commission’s Committee on Means of Enforcement Held on February 25, at 2 (Feb. 29, 1944), available at RL, Pell Papers, Box 28, War Crimes Comm’n: State Dep’t.

⁸⁷ Letter from Pell to U.S. Secretary of State, Subject: International Court, at 2, available at RL, Pell papers, Box 28, War Crimes Comm’n: State Dep’t.

of each case by a Public Prosecutor belonging to one of the nations involved in the crime, or (2) prosecution of all cases by a United Nations' Prosecuting Office attached to the court. Liang argued:

Such an office was essential if the court was to try Hitler and other arch criminals. If not, [Liang] did not regard it as useful. Why, for example, should a British prosecutor represent the Belgium Government? . . . To create a prosecuting office with nothing to do would discredit international machinery.⁸⁸

Therefore, China intended to prosecute the criminals on its own before such an international criminal court. Unfortunately for China, the International Prosecution Section in Tokyo was a centralized office: according to Article VIII of the Charter of the Tokyo Tribunal, the Supreme Commander would designate the "chief counsel."⁸⁹ Any member of the United Nations engaged in the recent war against Japan might appoint an associate counsel to "assist" the chief counsel. MacArthur nominated American politician Joseph Keenan as chief counsel.⁹⁰

Out of the same concern, China was not very interested in the establishment of military courts in Allied-occupied areas. During the discussion regarding an international criminal court, it was also recognized that establishing such a "treaty court" would be a lengthy process—not to mention the British opposition and the possibility that the U.S.S.R., whose absence from the UNWCC meant its views were unknown, might not participate. Thus, Pell suggested that military courts of the occupying powers should be entrusted with the trial of war criminals, as a complement to the time-consuming international criminal court. Although the Commission adopted both the international court and military court options, China and the continental European countries strongly desired the former. According to Joseph Hodgson, Pell's deputy, this desire "stem[med] from an opportunity for participation in such a court, their lack of voice in the military counsels, their distrust of the great Powers, their belief that a civil court would be more just, and their hope that such a court will be a forerunner of a permanent international court."⁹¹ China's concerns materialized later in Japan: other than the IMTFE, the only military tribunal set up in Japan was the Yokohama U.S.

⁸⁸ Notes of Discussion at Committee II on 10th August 1944, on the Question of Establishing a Prosecuting Office Attached to the Inter-Allied Court, at 2 (Aug. 23, 1944), available at RL, Pell Papers, Box 28, War Crimes Comm'n: State Dep't.

⁸⁹ Compared with the IMTFE, the IMT was more similar to, though still different from, the international criminal court envisaged by the UNWCC. The four prosecutorial teams in the IMT, the United States, United Kingdom, the Soviet Union, and France, coordinated with each other to some degree, and had equal standing. By contrast, the International Prosecution Sector in Tokyo had an American chief counsel. MEI, *supra* note 54, at 73.

⁹⁰ *Id.*

⁹¹ KOCHAVI, *supra* note 2, at 117.

military tribunal. As China was not part of the occupying force, it could only establish military tribunals on Chinese soil.

On September 19, 1944 and October 3, 1944, respectively, the Draft Convention for the Establishment of a United Nations War Crimes Court and the recommendation for the Establishment by Supreme Military Commanders of Mixed Military Tribunals were adopted by the Commission.⁹² The adopted drafts, however, were largely ignored. Additionally, there was scant evidence that the London Agreement was influenced by the UNWCC's work.

B. The Discussion of an International Court in Japan

By the time the London Agreement concluded on August 8, 1945, it was certain that Japanese surrender was imminent. Therefore, the Commission sped up its discussion on the war crimes trials in the Far East. On the same day, Hodgson, who had succeeded Pell as the U.S. representative, suggested that Committee II meet to discuss recommendations concerning the war in the Far East. However, he also pointed out that there had already been a Far Eastern and Pacific Sub-committee (the one set up to discuss the establishment of the Chungking Sub-commission), to which such questions could be more suitably addressed. A debate commenced, regarding which committee should be responsible for the discussion. Some representatives argued that the Far Eastern Sub-committee was only ad hoc and that questions of enforcement should all be referred to Committee II, whether they related to Japanese war criminals or other war criminals.⁹³

Liang responded that the composition of the Far Eastern Sub-committee was more comprehensive, and it was thus more suitable for dealing with Far Eastern war criminals. If Committee II were to conduct discussion, its membership should be enlarged to include representatives of all the nations interested in the Far East.⁹⁴ In fact, Koo had been elected to both Committee II and the Far Eastern Sub-committee. Liang's preference for the Far Eastern Sub-committee might lie in the fact that the chairman of Committee II was Hodgson, while that of the Far Eastern Sub-committee was Liang's compatriot Koo. At the end of the discussion, the Commission decided to convene an ad hoc committee consisting of the United States, Australia, Canada, China, France, United Kingdom, India, Netherlands, and New Zealand.⁹⁵ Koo served

⁹² UNWCC, Notes of Thirty-Second Meeting Held on 19th September 1944, at 1 (Sept. 19, 1944), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents; UNWCC, Notes of Thirty-Fourth Meeting Held on October 3rd, 1944, at 1 (Oct. 3, 1944), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

⁹³ UNWCC, Notes of Seventy-Fourth Meeting Held on August 8th, 1945, at 4 (Aug. 8, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

⁹⁴ *Id.*

⁹⁵ *Id.*

as the chairman of this ad hoc committee, which made several recommendations that were later adopted by the Commission.⁹⁶ The recommendations included the establishment of an international military tribunal and a central registry, early detention of Japanese war criminals, and a request to the British Government to convene a diplomatic conference.⁹⁷

Considering the irrelevance of the UNWCC by 1945, Koo knew that there was very little that the UNWCC could do. In his October 4 telegram to Chungking, Koo suggested that the negotiation of a treaty would not happen in the UNWCC. Instead, the Chinese government should consult with the United States and then make a proposal to the United Kingdom, U.S.S.R., and Australia.⁹⁸ Things developed as Koo expected. At the November 1 meeting, the Chairman raised the issue of whether a letter should be sent to the British Foreign Office to request that the British Government convene a diplomatic conference to deal with the issue, as the August 29 recommendations suggested, or sent to the Far Eastern Advisory Commission in Washington instead.⁹⁹

Koo telegraphed Chungking for further instructions on this issue, and the Ministry of Foreign Affairs replied:

The U.S. Government told Ambassador Wei Dao-Ming that per MacArthur's request, China, the United States, the United Kingdom, and the U.S.S.R. will send five representatives; Australia, the Netherlands, Canada, France, New Zealand will send three representatives to form an international tribunal to try Far Eastern war criminals. We don't have to insist on an international agreement like the London Agreement.¹⁰⁰

Hence, in the November 8 meeting, Koo stated that since conversations were proceeding between certain governments principally interested in the subject and with very much the same objective in view, his government wondered whether the moment was opportune for the UNWCC to make a decision. In the end, the Commission decided to take no further action, because "the question was being thoroughly and vigorously considered by

⁹⁶ UNWCC, Notes of Seventy-Seventh Meeting Held on August 29th, 1945, at 8 (Aug. 29, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

⁹⁷ *Id.*

⁹⁸ Telegram from Wellington Koo (顾维钧) to Ministry of Foreign Affairs (Oct. 4, 1945), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

⁹⁹ UNWCC, Notes of Eighty-Third Meeting Held on October 31st, 1945, at 5 (Oct. 31, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

¹⁰⁰ Telegram from Wang Shijie (王世杰), Minister of Foreign Affairs to Wellington Koo (顾维钧) (Nov. 5, 1945), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

those Governments . . . [,] the Governments concerned were doing their best and that the Commission's recommendations were receiving full attention."¹⁰¹

The issue was left for diplomatic resolution. As mentioned, the Ministry of Foreign Affairs told Koo not to insist on a treaty. In a November 10 telegram, Koo reiterated the importance, in his view, of a treaty. According to Koo, without a treaty, the jurisdiction of such a court was doubtful, since crimes against peace and humanity were not part of the existing international law. The United States proposed that principles in the recent London Agreement should apply *mutatis mutandis*; however, the London Agreement made it clear that the principles applied only to war criminals in Europe. Although the UNWCC and the Chungking Sub-commission had endorsed the London principles, these commissions were only advisory in nature and did not represent the official positions of governments. Considering that China never participated in the London Agreement, Koo thought the Chinese government should still try to enter into a treaty to serve as the basis for the Far East trials.¹⁰²

In the end, Koo's wishes were not fulfilled. A Special Proclamation issued by Douglas MacArthur, the Supreme Commander of the Allied Powers, established the IMTFE on January 19, 1946. The charter of the IMTFE was attached as an annex to the Special Proclamation. Even worse for China, eleven judges were appointed to represent eleven different states respectively, as opposed to the original proposal's provisions allowing China to have more judges than the smaller states. In essence, China's concerns in 1944¹⁰³ all became a reality. There was no treaty court, and the Americans dominated the mixed military tribunal in the occupied areas. Moreover, unlike the IMT, the IMTFE's International Prosecution Section was a centralized prosecuting office with an American serving as its head.

Furthermore, some perpetrators that China viewed as major war criminals were not prosecuted by the IMTFE in the end. The Chinese representative disclosed in the November 9, 1945 Sub-commission meeting that Generalissimo Chiang Kai-Shek "had . . . chosen 12 persons as Major War Criminals and had requested General MacArthur to effect their arrest."¹⁰⁴ According to the Chinese representative, MacArthur had not replied. It is not known whether there was ever a response from MacArthur, but what is known

¹⁰¹ UNWCC, Notes of Eighty-Fifth Meeting Held on November 8th, 1945, at 6 (Nov. 8, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

¹⁰² Telegram from Wellington Koo (顾维钧) to Ministry of Foreign Affairs (Nov. 10, 1945), available at CU, Koo Papers, Box 54, Regarding War Crimes.

¹⁰³ See *supra* Part III.A.

¹⁰⁴ UNWCC, Meeting of Far Eastern and Pacific Sub-Commission of the UNWCC (Dec. 10, 1945), available at NAUK, FO 371/57567. Interestingly, the selection and request were not mentioned in the official minutes—possibly due to their political sensitivity.

is that less than half of the twelve were included in the final indictment of twenty eight Criminals A, or major war criminals, by the IMTFE.¹⁰⁵

This less-than-satisfactory development stemmed from China's diplomatic difficulty after the war. Supreme Commander MacArthur proclaimed that he had established the IMTFE "with the authority bestowed upon him by the governments of the United States, Great Britain, and the Soviet Union at the Moscow Conference of December 1945 and with China's concurrence." Pursuant to the Potsdam Agreement concluded between the United States, the United Kingdom, and the U.S.S.R., a Council of Foreign Ministers was to be established. The agreement provided that in addition to the foreign ministers of the three powers, China and France would be invited as well. The function of the Council of Foreign Ministers was to "do the necessary preparatory work for the peace settlements." In September 1945, the foreign ministers of China, the United States, the United Kingdom, the U.S.S.R., and France met in London. No consensus was reached. The American, British, and Soviet foreign ministers met again in Moscow in December, but this time, their Chinese and French counterparts were excluded. As Koo stated, "I was struck by its undemocratic character. I was also surprised that China had so readily agreed."¹⁰⁶ Koo's comment of the situation accurately concludes this section:

Not only the Italian peace treaty but even Manchuria and Korea were discussed at Moscow without our participation. Although China was the first country to resist Japan and suffered most and longest, the question of control of Japan was also settled behind our backs. The Soviet Union joined the war against Japan only the day before she actually surrendered, yet the U.S.S.R. sits as an equal partner with the United States and Great Britain in the deliberations concerning Japan. We have been no more prepared for peace than for war.¹⁰⁷

IV. THE WORK IN CHINA: NATIONAL OFFICE AND SUB-COMMISSION

In China, a Chinese National Office under the Chinese government was set up to investigate war crimes committed in China and collect evidence to be sent to the UNWCC. The Chinese National Office cooperated primarily with

¹⁰⁵ The list included Shigeru Honjo, Kenji Doihara, Shisao Tani, Kingoro Hashimoto, Seishiro Itagaki, Shiroku Hata, Eiki Tojo, Takaji Wachi, Sadaaki Kagesa, Takashi Sakai, Rensuko Isogaya, and Seiichi Kita. *Id.* Among the 12, Kenji Doihara, Kingoro Hashimoto, Seishiro Itagaki, Shiroku Hata, and Hideki Tojo were tried by the IMTFE, while Hisao Tani was extradited to China to be tried and executed for the Nanking massacre. See MEI, *supra* note 54, at 157.

¹⁰⁶ Koo Oral History, *supra* note 20, at 926.

¹⁰⁷ *Id.*

the Far East and Pacific Sub-commission of the UNWCC. This section examines China's work in the National Office and the Sub-commission.

A. National Office

Pursuant to a recommendation by the UNWCC, the participating governments constituted National Offices, the duties of which were to investigate and produce reports relating to war crimes, and submit information concerning the offences which they had investigated to the Commission.¹⁰⁸ The Chinese National Office was set up in early 1944, and its first meeting was held on February 23, 1944. Through February 1945, the Chinese National Office convened twelve times.¹⁰⁹ According to the Chinese National Office's March 1945 report, 3000 cases had been investigated by February that year. Few cases, however, had been submitted to the Chungking Sub-commission due to a delay in translating the cases into English.

The Chinese National Office acknowledged the several weaknesses in its work. First, while the war started in 1937, the Office was not set up until 1944. Investigation into crimes committed so long ago was difficult, if not impossible. Second, Chinese people were not used to filling in the standard forms. Third, there were so many participants representing different government agencies that it was hard to convene a meeting. Fourth, the staff was mostly composed of the personnel of other agencies who worked in the Chinese National Office only on a part time basis. Finally, the lack of budget resources resulted in an inability to investigate and collect information on its own.¹¹⁰

The lack of progress in the Chinese National Office had an adverse effect on the Chungking Sub-commission. The Sub-commission started to meet in November 1944, but cases did not arrive in appreciable numbers until July 1945.¹¹¹ In the meantime, the Sub-commission had virtually nothing to examine, and foreign governments became dissatisfied with the lack of progress. For example, in a meeting with the Chinese Foreign Minister,

[An American officer described] at length the concern and disappointment of the members of the Sub-commission at the

¹⁰⁸ HISTORY OF THE UNWCC, *supra* note 24, at 121.

¹⁰⁹ Rijun Zuixing Diaocha Wei Yuanhui Tongji (Shang) (日军罪行调查委员会调查统计 [上]) [*Japanese War Crimes Investigation (Part 1)*], in 19 SELECTED SOURCES ON THE MASSACRE OF NANKING, *supra* note 49, at 36 (2006) [hereinafter *Japanese War Crimes Investigation*].

¹¹⁰ *Id.*

¹¹¹ UNWCC, Far Eastern & Pacific Sub-comm'n, Minutes of the Twenty-Third Meeting of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission, at 1 (Apr. 5, 1946), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

apparent inability of the present Chinese National Office to present cases appropriately prepared and investigated While the Sub-commission was now well organized and prepared to function, it had practically nothing to do as far as consideration of cases was concerned because the cases we received were of the character indicated [such as a case in which a Japanese soldier robbed a Chinese citizen of seven dollars] and the evidence in support of them was unhappily extremely meager.¹¹²

A few days later a British official raised the same concern to the Deputy Minister.¹¹³ When the National Office Conference was held by the UNWCC in London in June 1945, the Chinese Foreign Minister had to instruct the Chinese representatives to “conceal our lack of progress.”¹¹⁴

In July 1945, the Chinese National Office was reorganized and was made responsible for all war crimes issues, including arrest, investigation, extradition, and listing of war criminals.¹¹⁵ On July 27, the Chungking Sub-commission for the first time listed about 100 Japanese war criminals, including a general.¹¹⁶ By September, “the [Chinese] National Office had been functioning efficiently and listing of war criminals by the [Chungking] Sub-commission [was] now proceeding rapidly.”¹¹⁷ Through October 1946, the Chinese National Office had taken 171,152 cases, 36,902 of which were submitted to the Chungking Sub-commission.¹¹⁸

B. The Chungking Sub-commission

After the Chungking Sub-commission's establishment but before the Japanese surrender, the issue of setting up a war crimes investigation agency in

¹¹² George Atcheson, Jr., Memorandum of Conversation on Chinese National Office for the Investigation of War Crimes, at 1 (Apr. 4, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹¹³ Letter from Briggs to U.S. Secretary of State, at 1 (Apr. 20, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹¹⁴ Letter from Wang Huacheng (王化成) & Yang Yunzhu (杨云竹) to Ministry of Foreign Affairs (June 2, 1945), available at CU, Koo Papers, Box 54, Regarding War Crimes.

¹¹⁵ *Japanese War Crimes Investigation*, supra note 109, at 121.

¹¹⁶ Letter from U.S. Ambassador Patrick Hurley to U.S. Secretary of State, at 1 (July 28, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹¹⁷ Letter from U.S. Ambassador Patrick Hurley to U.S. Secretary of State, at 1 (Sept. 9, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹¹⁸ *Japanese War Crimes Investigation*, supra note 109, at 28.

Japan was discussed. After the Japanese surrender, the Chungking Sub-commission's work focused on the listing and apprehension of Japanese war criminals in China.

1. Setting Up an Agency in Japan

In May 1945, as victory against Japan appeared imminent, there was discussion in Committee II of the Commission regarding the establishment of a war crimes investigation agency in Japan after Japan's surrender. The Australian representative proposed that the scope of the activities of that agency should be extended to cover territories under Japanese occupation, such as China and Southeast Asia. King strongly opposed this proposal, stating that these territories could be taken care of by the National Offices. King was supported by the U.S. representative, and the Australian proposal was withdrawn. King suggested that the details of the agency should be decided by the Chungking Sub-commission, but was met with Australian opposition due to Australia's difficulty in communicating with Chungking.¹¹⁹ At the end of that meeting, it was decided that the governments concerned should study the proposal to set up such an agency. In the next meeting of Committee II, King reiterated the importance of involving the Chungking Sub-commission. Thus, Committee II decided to postpone any decision as to whether it should wait for the Chungking Sub-commission to discuss the matter.¹²⁰ On June 5, however, Committee II decided not to wait any further and asked King to prepare a proposal.¹²¹

King's proposal, circulated on June 12, was as follows: the Supreme Allied Command should be entrusted with the task of setting up an agency, which is responsible for collecting evidence, apprehending Japanese war criminals, taking them into custody, and handing them over to the competent courts for trial. A representative from each of the National Offices concerned should be attached to the agency as a liaison officer and invited to take charge (along with the representative's own team) of the investigation of crimes concerning nationals of his country. The UNWCC and the Chungking Sub-commission should transmit lists of war criminals directly to the agency, and there should be the fullest coordination and exchange of information between the agency and the UNWCC and the Chungking Sub-commission.¹²² This proposal was

¹¹⁹ Telegram from Wunsz King to Ministry of Foreign Affairs (May 16, 1945), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

¹²⁰ Telegram from Wunsz King to Ministry of Foreign Affairs (May 23, 1945), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

¹²¹ UNWCC, Notes of Meeting of Committee II Held on 5th June 1945, at 1 (June 5, 1945), *available at* RL, Pell papers, Box 28.

¹²² UNWCC, Recommendation Regarding the Establishment of an Agency or Agencies Inside Japanese Territory to Investigate War Crimes 1 (Aug. 20, 1945), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

adopted by the Commission on June 15¹²³ and by the Chungking Sub-commission on August 3.¹²⁴

After the war, the Legal Section of the Supreme Commander of the Allied Powers was set up to investigate crimes, and to trace, apprehend, and prosecute all Japanese war criminals, except for the major war criminals (Criminals A) charged by the International Prosecution Section of the IMTFE.¹²⁵ The Legal Section, like the Yokohama military tribunal, was under the U.S. authorities. Liaison teams from China, Australia, Canada, and the United Kingdom were attached to the Legal Section, but only two Chinese officials participated in the investigations.¹²⁶

2. The Sub-commission's Work After the Japanese Surrender

After its establishment by the UNWCC, the Chungking Sub-commission started listing Japanese war criminals in July 1945. After several rounds of list distributions, the representatives began inquiring about enforcement by the Chinese authorities. In a meeting on December 21, 1945, the British representative asked whether the Chungking Sub-commission had received any information as to what action had been taken with regard to the war criminals whose cases had been investigated and listed by the Chungking Sub-commission. The Secretary-General, Wang Hua-Cheng, could only promise to present this question to the Chairman, Wang Chung-Hui, who was absent that day.¹²⁷ The foregoing shows that the Chinese authorities were slow in the beginning with regard to war criminal arrests and prosecution.

Three months later, the Chinese representative reported in a March 1946 meeting that as of February 10, 1946, a total of 175 war criminals had been arrested and 172 of them had been put on trial.¹²⁸ The work, however, was

¹²³ UNWCC, Notes of Sixty-Fifth Meeting held on June 13th, 1945, at 9 (June 13, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file, UNWCC Minutes & Documents.

¹²⁴ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Eighth Meeting of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission 1 (Aug. 3, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹²⁵ HISTORY OF THE UNWCC, *supra* note 24, at 383.

¹²⁶ MEI, *supra* note 54, at 76-77.

¹²⁷ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Eighteenth Meeting of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission, at 1 (Dec. 21, 1945), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹²⁸ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Twenty-Second Meeting of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission, at 1 (Mar. 8, 1946), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

difficult, since most Japanese military and civilian personnel were repatriated to Japan soon after the war. In a meeting in October 1946, the Chinese representative admitted that "only a small number of Japanese War Criminals on the Sub-commission's lists [had] been arrested . . . as a result of the speedy repatriation of the Japanese from China."¹²⁹ According to a report prepared by the Chinese authorities on January 23, 1948,¹³⁰ 2,388 Japanese war criminals were arrested, among whom 1,569 were released without indictment, 110 sentenced to death, 41 sentenced to life imprisonment, 167 sentenced to a limited prison term, 283 acquitted, and 218 still awaiting trial.¹³¹

As aforementioned, since most Japanese were repatriated back to Japan, extradition became an important question. According to a report on January 23, 1948, 77 Japanese war criminals had been extradited,¹³² including some of the leading perpetrators of the massacre of Nanking in 1937 (those who were not categorized as Criminals A and thus were dealt with by the Legal Section instead of the International Prosecution Section), which led to more than 200,000 Chinese deaths. The leading perpetrators of the massacre of Nanking were all sentenced to death and executed.¹³³ Yet none of the Criminals A were extradited back to China. The original arrangement intended for major criminals to be tried by the Tokyo Tribunal. Among the 118 criminals, only 28 were indicted by the International Prosecution Section. All others, who should have been tried by the IMTFE, were released by MacArthur without a trial.¹³⁴ In early 1948, when the news reached Washington, Koo, who by then had become the Chinese Ambassador to the United States, telegraphed China to inquire if the issue should be raised in Washington and if any extradition requests should be made.¹³⁵ The Foreign Ministry responded that China should not oppose the American policy of releasing these major war criminals.¹³⁶

There is relatively little discussion in the UNWCC's records about the arrests and trials in China except for the statistics already mentioned. Some drawbacks were found in the minutes of a Chinese National Office meeting: most judges were not familiar with laws of war, the personnel of the military

¹²⁹ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Twenty-Third Meeting of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission, at 1 (Oct. 1, 1946), available at NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹³⁰ This is the latest report the author could find.

¹³¹ *Japanese War Crimes Investigation*, *supra* note 109, at 31.

¹³² *Id.*

¹³³ See generally *Nanjing Trials*, *supra* note 61.

¹³⁴ MEI, *supra* note 54, at 31.

¹³⁵ Telegram from Wellington Koo (顾维钧) to Wang Shijie (王世杰), Minister of Foreign Affairs (Feb. 21, 1948), available at CU, Koo Papers, Box 54, Regarding War Crimes.

¹³⁶ Telegram from Ministry of Foreign Affairs to Wellington Koo (顾维钧) (Mar. 6, 1948), available at CU, Koo Papers, Box 54, Regarding War Crimes.

tribunals were paid very little, and many arrested war criminals starved or froze to death due to a lack of resources.¹³⁷ After trial in China, the convicted war criminals would be repatriated back to Japan for imprisonment.¹³⁸ The criminals imprisoned in Japan were all released in 1955, however, pursuant to the Peace Treaty concluded between the Republic of China and Japan. Shortly after the release of the minor criminals, the major criminals convicted by the IMTFE but not executed were released as well.¹³⁹

In June 1946, the Chinese government relocated from the wartime capital, Chungking, back to its legal capital, Nanking. The Chungking Sub-commission moved from Chungking to Nanking too. The last meeting took place on March 4, 1947, after which the Chungking Sub-commission formally concluded. According to its final report, altogether 1243 charges were reviewed, involving the names of approximately 2434 persons or units.¹⁴⁰ Compared to the more than 36,000 cases submitted by the Chinese authorities,¹⁴¹ the Chungking Sub-commission was only able to deal with a small portion of all the cases referred to it.

CONCLUSION

A final detail worth discussing concerns this Note's title, *Forgiven and Forgotten: The Republic of China in the United Nations War Crimes Commission*. Forgiven were the Japanese war criminals. Most of the Criminals A arrested were released by the SCAP without trial, including Nobusuke Kishi, who later became the Prime Minister of Japan (1957–1960). Forgotten was the UNWCC itself, and China's participation in its work. This result was hardly surprising, since most legal historians would agree the UNWCC was never a major player in war crimes issues. Nevertheless, considering the UNWCC was the only international forum where China could express its perspective on war crimes issues, the least Chinese academia should do is pay more attention to the UNWCC. The title uses the official name of the Chinese government recognized during the Second World War, the Republic of China (ROC), because China's later regime change might explain why China's involvement in the discussion of war crimes issues has been forgotten ever since. After the Communist Party took power and adopted a new official state name in 1949, the People's Republic of China (PRC) tended to depict diplomacy during the ROC era as nothing but subservience to the interests of Western imperialism.

¹³⁷ *Japanese War Crimes Investigation*, *supra* note 109, at 28–30.

¹³⁸ *Id.*

¹³⁹ Telegram from Ministry of Foreign Affairs to Wellington Koo (顾维钧) (Sept. 17, 1955), *available at* CU, Koo Papers, Box 54, Regarding War Crimes.

¹⁴⁰ UNWCC, Far Eastern & Pacific Sub-Comm'n, Minutes of the Thirty-Eighth Meeting of the Far Eastern and Pacific Sub-Commission, at 1 (Mar. 4, 1947), *available at* NACP, RG59, Records of the Legal Advisor Relating to War Crimes file.

¹⁴¹ *Japanese War Crimes Investigation*, *supra* note 109, at 31.

Hopefully, this Note, written primarily for the 100th anniversary of the ROC's establishment in 1912, gives a fairer account of the efforts of the ROC and its diplomats and lawyers in the UNWCC.

