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# Report for Congress

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## **U.S. Prisoners of War and Civilian American Citizens Captured and Interned by Japan in World War II: The Issue of Compensation by Japan**

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# U.S. Prisoners of War and Civilian American Citizens Captured and Interned by Japan in World War II: The Issue of Compensation by Japan

## Summary

Of the approximately 130,000 American prisoners of war (POWs) in World War II (WWII), 27,000 or more were held by Japan. Of the approximately 19,000 American civilian internees held in WWII, close to 14,000 were captured and interned by Japan. After the conclusion of WWII, Congress passed the War Claims Act of 1948, which created a War Claims Commission (WCC) to adjudicate claims and pay out small lump-sum compensation payments from a War Claims Fund consisting of seized Japanese, German, and other Axis assets. Payments to POWs held by either Germany or Japan were at the rate of \$1 to \$2.50 per day of imprisonment. The WCC also paid civilian internees of Japan \$60 for each month of internment, and civilians were also eligible for compensation for disability or death. The War Claims Act of 1948 did not authorize compensation for civilian internees held by Germany.

Since payments were already being made to U.S. POWs out of Japanese assets via the War Claims Act, POWs of other Allied countries were given first claim on payments from Japanese assets situated in neutral countries or countries with which the Allied Powers were at war, as specified in the Multilateral Peace Treaty with Japan of 1951. In the decades since this initial compensation, POW and internee groups have tried several routes to obtain more compensation for their internment by Japan. Groups have tried and failed to get legislation passed, to have the U.S. Court of Claims hear their claims, to get Japan to pay reparations of about \$20,000 to each legitimate claimant, or to have the United States compensate them.

In 1995 POW and civilian internee groups from several countries filed suits in the Japanese court system, seeking a net payment of \$20,000 for each POW/internee. However, Japanese courts ruled out compensation, pointing to Article 14 of the Multilateral Peace Treaty, in which the United States waived any further claims by U.S. citizens against Japan. In late 1999, in a new tactic, POWs/internees who claim to have been used as forced laborers filed suit in California courts against several major Japanese companies seeking reparations: so far all suits have been dismissed. On June 28, 2000, the Senate Judiciary Committee held a hearing on POW survivors of the Bataan Death March and their claims against Japanese companies they allege used them as slave laborers. Although attempts to give POWs additional U.S. compensation failed in the 106<sup>th</sup> Congress, legislation was passed to find, declassify, and release any Japanese records that the United States might have relating to Japanese WWII war crimes. A sense of Congress resolution also passed that asked the Administration to facilitate discussions between POWs and Japanese companies over POW slave labor claims. In the 107<sup>th</sup> Congress, several pieces of legislation were introduced, including one to give a tax-free gratuity of \$20,000 to Armed Forces personnel and civilian employees of the federal government who were forced to perform slave labor by Japan in WWII; none became law. As the number of living POWs and civilian internees dwindles, those that survive continue to press the issue. This report will be updated as events warrant.

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# U.S. Prisoners of War and Civilian American Citizens Captured and Interned by the Japanese in World War II: The Issue of Compensation by Japan

## World War II—U.S. Prisoners of War and Civilian Internees

World War II (WWII) was fought during 1939-1945 in all corners of the globe by the Axis powers (Germany, Japan, Italy, and some smaller states) against the Allies (United States, United Kingdom, Free French, Nationalist China, the Soviet Union, and other allies). Major air, land, and sea battles took place on and around the European landmass, the Mediterranean, Asia, North Africa, the Far East, the Atlantic, the Pacific, and elsewhere. Estimates of people and resources involved in WWII vary widely. According to *Louis L. Snyder's Historical Guide to World War II*, military forces at their peaks are estimated to have ranged from a high estimate of 68.8 million combatants to a low estimate of 66.6 million combatants. According to this same source, estimated worldwide deaths, both military and civilian, were somewhere between 24.4 million and 30 million.<sup>1</sup> *The World War Two Almanac, 1931-1945*, gives an estimate of 60 million combatants and worldwide deaths as being more than 53 million.<sup>2</sup> Finally, the essay on WWII deaths in *The Historical Encyclopedia of World War II* estimates that somewhere between 45 and 50 million people were killed by the direct effects of WWII.<sup>3</sup>

For the United States, WWII formally started when Japan's attack on Pearl Harbor on December 7, 1941, triggered President Franklin D. Roosevelt's December 8 request that "... Congress declare that since the unprovoked and dastardly attack by Japan on Sunday December 7, 1941, a state of war has existed between the United States and the Japanese Empire."<sup>4</sup> This led to a declaration of war by Congress on

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<sup>1</sup> Louis L. Snyder, *Louis L. Snyder's Historical Guide to World War II* (Westport, CT: Greenwood, 1982), p. 126.

<sup>2</sup> "World War Two: The Road to Victory," special pull-out section, *Washington Times*, Aug. 14, 1995, p. 9, chart, "World War II by the Numbers."

Source for statistics: Robert Goralski, *World War Two Almanac, 1931-1945: A Political and Military Record* (New York: Bonanza Books, 1981).

<sup>3</sup> Marcel Bradot et al., eds., *The Historical Encyclopedia of World War II* (New York: Facts on File, 1980), pp. 131-133.

<sup>4</sup> Franklin D. Roosevelt, *The Public Papers and Addresses of Franklin D. Roosevelt*, comp. (continued...)

the same day.<sup>5</sup> A total of 16.1 million U.S. troops served in WWII, and these troops suffered 291,557 battle deaths, 113,842 other deaths (due to disease, accident, etc.), and 671,846 wounds which were not mortal.<sup>6</sup> In addition to these casualties, according to some estimates (discussed below), some 130,000 U.S. troops were captured and became Prisoners of War (POWs).<sup>7</sup> Germany held almost 94,000 U.S. POWs, and Japan held over 27,000.<sup>8</sup> Prior to the outbreak of WWII, many American civilians were working and living abroad in areas which were to become combat areas as WWII progressed. According to one report, approximately 4,700 U.S. citizens were captured and interned by Germany, and almost 14,000 U.S. citizens were captured and interned by Japan.<sup>9</sup>

## Counting WWII Prisoners of War and Internees

The immense problems of World War II record-keeping in the heat of battle, how *POWs* and *internees* are defined, and sometimes unknowable individual circumstances, make an authoritative determination of the precise number of POWs and internees held by Germany and Japan in WWII virtually impossible. In the case of POWs, Charles A. Stenger, formerly with the Veterans Administration (VA), developed a set of figures revised annually since 1976 for POWs and an estimate for current numbers of surviving POWs for the Department of Veterans Affairs Advisory Committee on Former Prisoners of War. According to Dr. Stenger, these figures were compiled in cooperation with the Department of Defense (DOD), the National Academy of Sciences, and the National Archives. They are recognized and used by the Department of Veterans Affairs (VA) and other government agencies.

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<sup>4</sup> (...continued)

Samuel I. Rosenman (New York: Harper, 1950, 1941 volume), pp. 514-516.

<sup>5</sup> P.L. 328, 55 Stat 795 (1941).

<sup>6</sup> Department of Defense, Office of the Secretary of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, *Department of Defense Selected Manpower Statistics*, table 2-23, "Principal Wars in Which the United States Participated: U.S. Military Personnel Serving and Casualties." This publication is now only available online, and this table can be found on the DIOR Web site at [<http://web.1whs.osd.mil/mmid/m01/SMS223R.HTM>].

<sup>7</sup> CRS Issue Brief IB92101, *POWs and MIAs: Status and Accounting Issues*.

<sup>8</sup> Charles A. Stenger, *American Prisoners of War in WWI, WWII, Korea, Vietnam, Persian Gulf, Somalia, Bosnia, Kosovo and Afghanistan*, Statistical Data Concerning Numbers Captured, Repatriated, and Still Alive as of January 1, 2002, prepared for the DVA Advisory Committee on Former Prisoners of War, Mental Health Strategic Group, VHA, DVA, American Ex-Prisoners of War Association, 2002, unpublished. Stenger sent the author a copy in December 2001.

<sup>9</sup> See statistics on WWII POWs and internees from the Center for Internee Rights, Inc., an advocacy group, at its Web site [<http://www.expows.com>].

Dr. Stenger lists 27,465 POWs in the Pacific, of whom 11,107 died while in detention. He estimates that 4,920 of the survivors are alive as of January 1, 2002.<sup>10</sup>

According to Dr. Stenger, figures for civilian internees are less solid. He lists 7,300 American civilians as having been interned by Japan, of whom he estimates 1,969 are alive as of January 1, 2002. He also cites an additional 13,000 Amerasians holding American citizenship who hid during this period, but who were never interned; he estimates that 1,528 of those 13,000 Amerasians are still alive as of January 1, 2002.<sup>11</sup> The Office of the Army's Provost Marshal General, Prisoner of War Division, listed 13,979 American civilian internees (including War, Navy, and Merchant Marine personnel) in its compilation of internees "Formerly Detained by the Japanese Government."<sup>12</sup> The Center for Internee Rights, Inc. (CFIR), an internee advocacy group, calculates that there were 13,996 civilian internees held by Japan, of which the Center calculated 1,497 to be alive as of January 1, 2000.<sup>13</sup> According to a January 4, 2002 letter to the editor of the *New York Times* by Linda Goetz Holmes (see information about her at footnote 41), there are approximately 5,300 surviving U.S. POWs who were held by Japan.<sup>14</sup>

## War Claims Commission

In the United States, payments to WWII POWs and internees were made by the War Claims Commission (WCC), which was established by the War Claims Act of 1948 (50 U.S.C. App. 2001 et seq.). Under Section 12 of the War Claims Act, German and Japanese assets seized by the United States after December 17, 1941, under the Trading with the Enemy Act of October 6, 1917, (40 Stat. 411) as amended, were to be liquidated and placed in a War Claims Fund created on the books of the U.S. Treasury. According to 1959 testimony by the head of the Foreign Claims Settlement Commission, the total amount of these liquidated assets amounted to \$228,750,000.<sup>15</sup> The 1952 amendments to the War Claims Act (P.L. 303, 66 Stat.

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<sup>10</sup> Ibid.

<sup>11</sup> Stenger, *American Prisoners of War in WWI, WWII, Korea ....* Plus several telephone discussions with Dr. Stenger in 1999-2000.

<sup>12</sup> Office of the [Army] Provost Marshal General, Prisoner of War Division, *American Civilian Internees Formerly Detained by the Japanese Government (including War, Navy, and Merchant Marine Personnel)*, 7 December 1941-14 August 1945, CFN-127. The author has the title page and first and last pages of the tally contained in this three-volume, 350+-page document. The last page of this tally has a handwritten correction to the total number of internees changing the number to 13,979 from 13,97?.

<sup>13</sup> Statistics on WWII POWs and Internees from the Center for Internee Rights, Inc.

<sup>14</sup> Linda Goetz Holmes, letter to the Editor, *New York Times*, Jan. 4, 2002, p. A20.

<sup>15</sup> U.S. Congress, House, Committee on Interstate and Foreign Commerce, Subcommittee on Commerce and Finance, *War Claims and Enemy Property Legislation*, hearings, 86<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1959).

The head of the Foreign Claims Settlement Commission, Whitney Gilliland, stated in the hearing that the total amount of "... all sums covered [transferred] into the Treasury (continued...)

47, 49 [1952]), designated April 9, 1953, as the last day for the Commission to receive claims relative to WWII, and WCC programs were completed on March 31, 1955.

## Foreign Claims Settlement Commission

The War Claims Commission was combined with the International Claims Commission to form the Foreign Claims Settlement Commission. Subsequently, the Foreign Claims Settlement Commission was made a part of the Department of Justice.<sup>16</sup> The Commission took over the remaining duties of the WCC, and has administered WWII property claims programs under Title II of the War Claims Act and claims programs related to subsequent conflicts in which the United States has been involved (Korean Conflict, Vietnam War). It has also handled U.S. property claims against a number of other countries from wars in the 20<sup>th</sup> century, and is involved in the newly created Holocaust Claims Program recently agreed to by the United States and Germany.<sup>17</sup>

## Prisoners of War

A *prisoner of war* is defined in the original War Claims Act as “... any regularly appointed, enrolled, enlisted or inducted member of the military or naval forces of the United States who was held as a prisoner of war for any period subsequent to December 7, 1941, by any government of any nation with which the United States has been at war subsequent to such date.” Thus, POWs captured by any of the Axis Powers—Germany, Italy, or Japan—were eligible to apply for compensation.

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<sup>15</sup> (...continued)

pursuant to Section 39 of the Trading With the Enemy Act, that is, the net proceeds of the liquidation of vested World War II German and Japanese assets by the Office of Alien Property in the Department of Justice ... totaled \$228,750,000 ... and there was a balance of a little over \$500,000 remaining” (pp. 3-4).

The December 31, 1957 Report of the Commission stated that of an estimated \$225 million in vested assets of Germany and Japan, approximately \$171 million were of German origin and \$54 million were of Japanese origin. Claims against Italy were paid from a \$5 million fund provided by Italy. The report also stated that awards paid for POW claims against Japan were approximately \$71.6 million and that awards for civilian internees' claims against Japan were approximately \$18.1 million, while awards for U.S. POW claims against Germany totaled approximately \$51.78 million. Foreign Claims Settlement Commission. *Seventh Semiannual Report to Congress for the Period Ending December 31, 1957* (Washington: GPO, 1958).

<sup>16</sup> Interview with David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Jan. 24, 2000. Reorganization Plan No. 1 of 1954. 68 Stat. 1279; 19 *Federal Register* 3985, July 1, 1954.

<sup>17</sup> Information on this program can be found at the Department of Justice's Foreign Claims Settlement Commission Web site at [<http://www.usdoj.gov/fcsc/>].



The preceding definition apparently accounts for the denial, cited in a footnote in the Foreign Claims Settlement Commission's 2000 *Annual Report*, of many thousands of claims for compensation by residents of U.S. territories and possessions occupied by enemy forces. This was because the claimants, many of them Filipinos, were not officially listed as members of duly recognized units of the U.S. Armed Forces during WWII.<sup>18</sup>

## Internees

Under the War Claims Act, compensation of civilians was to go only to "civilian American citizens," i.e., "... any person who, being then a citizen of the United States, was captured by the Imperial Japanese government on or after December 7, 1941, at Midway, Guam, Wake Island, the Philippine Islands or any Territory or possession of the United States attacked or invaded by such government, or ... while in transit to or from ... or who went into hiding at any such place." Thus civilian internees held by Japan were able to file for compensation but not civilian internees captured by the Germans. A later amendment<sup>19</sup> to the War Claims Act extended coverage to certain Guamanians who were captured and interned by Japan.

## American Civilians in Europe and Asia vs. Those in the Philippines

In the 1948 hearings on the War Claims Act, a distinction was made between those American civilians living in Europe and Asia who State Department testimony indicated had been warned several times to leave Europe and Asia, and those American citizens in the Philippines and vicinity who were not warned.<sup>20</sup> Only "civilian American citizens" who were in hiding, in transit in the area of the Philippines, or captured and interned by the Japanese were entitled to apply for compensation by this legislation.<sup>21</sup>

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<sup>18</sup> U.S. Department of Justice, Foreign Claims Settlement Commission, *2000 Annual Report* (Washington: GPO, 2000), p. 41. Footnote 1 to Table of Completed Programs, War Claims Act of 1948. This report is available online at [<http://usdoj.gov/fcsc/annrep00.htm>].

<sup>19</sup> Foreign Claims Settlement Commission, *Decisions and Annotations*, p. 666. In 1962, P.L. 87-617 amended the War Claims Act to add detention benefits for Guamanians captured on Wake Island by Japan.

<sup>20</sup> Robert R. Wildon, "Recent Developments in the Treatment of Civilian Alien Enemies," *American Journal of International Law*, vol. 38, issue 3 (July 1944), pp. 397-398. According to Wildon, there was an exchange of civilian prisoners with Japan early in the war. The ship *SS Gripsholm* repatriated over 1,300 Americans, officials and non-officials, from the Far East to the United States in July 1942. Another exchange of approximately 1,240 U.S. nationals and 260 nationals of other American republics and Canada was concluded in October 1943.

<sup>21</sup> U.S. House, Committee on Interstate and Foreign Commerce, *Amending the Trading with the Enemy Act; Creating a Commission to Make Inquiry and Report with Respect to War* (continued...)

## Peace Treaties with Japan and Germany

The United States concluded a treaty ending the state of war between the United States and Japan in 1951 that included POW compensation provisions. In addition, the War Claims Act (WCA) dealt with U.S. POWs held by all Axis powers, as well as civilian American internees of Japan. Since the United States did not conclude a peace treaty with Germany, only recently has compensation for some U.S. civilian internees of Germany been awarded.<sup>22</sup>

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<sup>21</sup> (...continued)

*Claims; and Providing Relief for Internees in Certain Cases*, report to accompany H.R. 4044, 80<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 976 (Washington: GPO, 1947).

According to this report, a distinction was made between American civilians who were in Europe and Asia and who had been warned by the State Department several times before the war to leave and who had several boats sent to Europe to return them to the United States and American civilians who were in the Philippines and other American territories and possessions who had not been warned to leave as a matter of national policy. See, for instance, letter of the former High Commissioner to the Philippine Islands on pp. 6-7, and samples of State Department warning messages in the appendix (pp. 21-23).

<sup>22</sup> Despite meetings beginning with the Potsdam Conference, July 17-Aug. 2, 1945, and culminating in the 2 plus 4 agreement of Sept. 1990, no peace treaty officially ending the war with Germany was ever signed. (A treaty might have dealt with the issue of compensation of U.S. civilian internees.)

The first instance of internee compensation began with the Hugo Princz decision. Hugo Princz was an American citizen living with his family in Slovakia. When the United States declared war against Germany, Princz and the seven members of his family were turned over to the Nazis. He spent 3 years in Auschwitz and was the only member of his immediate family to survive. After the war, he waged a 40-year battle through the courts and Congress for reparations from Germany. Finally, in 1995, Princz and 10 other American survivors shared in a \$2.1 million settlement from Germany. Subsequently, an agreement between the U.S. government and that of Germany resulted in the establishment of the Holocaust Claims Program.

In 1997, the Foreign Claims Settlement Commission ruled that only those Americans who suffered in a concentration camp or subcamp, or were made to participate in a forced labor march, were eligible for the Holocaust Claims Program. As a result of an agreement between the United States and Germany which is part of the Holocaust Claims Program, the U.S. Treasury received \$18.5 million from Germany, which, reportedly, it will pay out to 235 eligible survivors in lump sum payments of \$30,000 to \$250,000. According to an article from the Jewish Telegraphic Agency, until the 1995 Hugo Princz decision, no individuals imprisoned in Nazi camps who were U.S. citizens at the time of the war had been compensated by Germany.

Source: Peter Ephross, "U.S. Holocaust Survivors Scheduled to Receive German Reparation Funds," *Jewish Telegraphic Agency*, June 22, 1999 (online). Available through NEXIS Library: NEWS File: CURNWS.

According to David E. Bradley, Chief Counsel of the Foreign Claims Settlement Commission, all but one of these claimants participating in the Holocaust Claims Program have been paid. Phone discussion with Mr. Bradley, June 24, 2000.

## War Claims Compensation

Under the War Claims Act of 1948, POWs held “... by any government of any nation with which the United States has been at war subsequent to [December 7, 1941]” were paid a lump sum payment based on \$1 per day of imprisonment in which a POW was able to prove under Section 6(b) of the law that “... the enemy government or its agents failed to furnish him such quantity or quality of food (as he was entitled to as a prisoner of war under the Geneva Convention on Treatment of Prisoners of War of July 27, 1929).”<sup>23</sup> The 1952 amendments added Section 6(d) that provided for payment of an additional \$1.50 per day if a POW were able to prove that he was subjected to “inhumane treatment” or forced to perform hard labor, thus bringing total aggregate payments to a maximum of \$2.50 per day of imprisonment.<sup>24</sup> Detention benefits could also be paid to members of a deceased POW’s immediate family. Claims for disability or ongoing health problems due to being a POW of the Axis powers were subsequently handled by the Veterans Administration.<sup>25</sup>

Adult “civilian American citizens” who were interned by Japan or in hiding on Midway, Guam, Wake, the Philippine islands, or in territories or possessions of the United States were paid at the rate of \$60 per month of detention (children under 18 were paid \$25/month). Civilian disability payments of \$25 per week (which was calculated as two-thirds of a weekly pay of \$37.50) had a lifetime cap of \$7,500. A similar cap of \$7,500 applied to death benefits, which were calculated based on the individual situation for each applicant. According to statute, these amounts were arrived at by using pay computations based on the then current compensation tables for longshoremen.<sup>26</sup> Funeral expenses of up to \$3,000 were also available. As with POW payments, payments could be made to a deceased internee’s immediate family. Continuing medical payments were made thereafter by the Department of Labor’s Office of Workers Compensation, with no cap for those who could show that their illnesses were caused by being an internee; 42 internees were receiving payments from the Office of Workers Compensation at the Department of Labor as of June 30, 2000.<sup>27</sup> The Foreign Claims Settlement Commission, in its latest annual report to

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<sup>23</sup> Leon Friedman, ed., *The Law of War: A Documentary History* (New York: Random House, 1972), vol. 2, pp. 488-522.

<sup>24</sup> *An Act to Amend Sections 6 and 7 of the War Claims Act of 1948*, chap. 167, 66 Stat. 47.

<sup>25</sup> The VA has a list of presumptive conditions related to being a POW that has expanded over the years since WWII. See the VA Fact Sheet, “VA Benefits for Former Prisoners of War,” at its Web site [<http://www.va.gov/pressrel/98fspow.htm>].

See also [<http://www.vba.va.gov/ro/central/indy/pow/POWPrsmp.htm>] for more detail on presumptive disabilities.

<sup>26</sup> War Claims Act of 1948, Section 5 (f)(1).

<sup>27</sup> Phone discussions with Roberta Mosier, Office of Workers Compensation Programs, Department of Labor, June 2, 1999, Aug. 9, 1999, and June 22, 2000. According to a June 13, 2001 phone discussion with Ralph Slighter of the same office, for the time period July 1, 1999-June 30, 2000, the DOL paid out \$216,095 in medical claims to 42 civilian internees from WWII. According to a handout from the Office of Workers’ Compensation, titled “War Claims Act of 1948,” “Unlike the department of Veteran’s Affairs, which accepts a  
(continued...)

Congress (2000), listed payments that had been made by the War Claims Commission and subsequently the Foreign Claims Settlement Commission for WWII POWs and internees or their immediate families as the following:

- ! POWs @\$1 inadequate food rate [filing period 1/30/50-3/31/52]  
286,315 claims, 179,725 awards = \$49,935,899<sup>28</sup>
- ! POWs @ additional \$1.50 forced labor rate [filing period 4/9/52-8/1/54]  
254,228 claims, 178,900 awards = \$73,492,926
- ! Civilian internees interned or in hiding @\$60 rate [filing period 4/9/52-8/1/54]  
23,000 claims, 9,260 awards = \$13,679,329<sup>29</sup>
- ! American POWs enlisted in Allied forces [completed 8/31/56]  
266 claims, 206 awards = \$335,836<sup>30</sup>
- ! American merchant seamen captured and interned by Germany or Japan [completed 8/31/56]  
385 claims, 171 awards = \$333,594<sup>31</sup>
- ! Interned civilian contractor employees @\$60 rate [filing period 8/31/54-8/31/55]  
2,968 claims, 2,222 awards = \$4,082,086<sup>32</sup>

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<sup>27</sup> (...continued)

number of conditions as presumptive in ex-POWs, OWCP accepts only periodontitis on a presumptive basis.”

<sup>28</sup> According to the footnote on p. 41 in the *2000 Annual Report* of the Foreign Claims Settlement Commission, the high number of denials was due to many thousands of claims by residents of U.S. territories and possessions occupied by enemy forces who were not officially listed as members of duly recognized units of the U.S. Armed Forces during WWII.

<sup>29</sup> Foreign Claims Settlement Commission, *2000 Annual Report*, p. 40-41. Under the War Claims Act of 1948, claims were also paid to reimburse U.S. affiliated and non-U.S. affiliated religious organizations and personnel who had aided U.S. armed forces and civilians in the Philippines, as well as to pay them for damage to educational and non-religious facilities in the Philippines, and for sequestration of U.S. citizen, military, and business bank accounts in the Philippines.

In 1962, P.L. 87-617 amended the War Claims Act to add detention benefits for Guamanians captured on Wake Island by the Japanese. According to the chart in the Foreign Claims Settlement Commission *2000 Annual Report* (pp. 36-41), of the more than \$517 million paid out for WWII claims under the War Claims Act, almost \$335 million was paid out under Title II, for war damage to property in certain Eastern European countries, territories attacked or occupied by the Japanese, and damage to ships, losses to insurers, and by passengers of ships, that was authorized by other 1962 amendments to the War Claims Act contained in P.L. 87-846.

<sup>30</sup> U.S. Foreign Claims Settlement Commission, *Decisions and Annotations* (Washington: GPO, 1968), p. 665. Compensation was authorized by P.L. 83-744, a 1954 amendment to the War Claims Act of 1948.

<sup>31</sup> Foreign Claims Settlement Commission, *2000 Annual Report*, pp. 40-41.

<sup>32</sup> Committee on Interstate and Foreign Commerce, *War Claims and Enemy Property* (continued...)

! Guamanians captured by the Japanese on Wake Island in WWII  
 detention benefits [program completed 12/31/63]  
 35 claims, 35 awards = \$91,782<sup>33</sup>

According to the Chief Counsel for the Foreign Claims Settlement Commission, there were approximately 39,000 claimants in the category of POWs held by Japan, or their survivors, and approximately 81,200 claimants in the category of POWs held by Germany or their survivors.<sup>34</sup>

Although the WCC believed that it had done a good job of publicizing its program and of contacting potential claimants, POW/internee groups, such as the National American Ex-POW Association, Inc. and the Center for Internee Rights, Inc. believed that insufficient efforts were made to find potential claimants.<sup>35</sup> These groups also contended that because many of the effects of internment might not show up until many years after the fact, the cutoff dates for filing claims were too short.<sup>36</sup>

## Treaty of Peace with Japan

The Multilateral Treaty of Peace with Japan—3 UST 3169 (United States Treaties and Other International Agreements), TIAS 2490 (Treaties and Other International Acts Series), September 8, 1951—which officially ended the state of war between Japan and the Allies, stated in Chapter V (dealing with issues relating to claims and property), Article 14(a):

It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless it is also

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<sup>32</sup> (...continued)

*Legislation*, p. 4. According to testimony by Whitney Gilliland, these claimants were not covered by the original Act.

<sup>33</sup> Foreign Claims Settlement Commission, *Decisions and Annotations*, p. 666.

<sup>34</sup> Fax from David Bradley, Chief Counsel, Foreign Claims Settlement Commission, July 12, 2000. This estimate for claims from the Pacific theater excludes claims sent to claimants in the Philippines.

<sup>35</sup> The WCC listed the following “Informational Activities” in their third *Semi-Annual Report to the Congress from the War Claims Commission for the Period Ending March 13, 1951*: “Special letters and releases [publicizing the March 1, 1951 deadline for filing] were prepared and sent to members of Congress, to directors of veterans’ agencies and governors of each State and Territory, to each member of all State legislatures in session, to other interested individuals, to veteran and internee organizations, press bureaus, weekly newspapers, and to radio stations. A total of 35,426 letters and releases were distributed in connection with this program. The Commission received press clippings from all sections of the country showing extensive use of its released material. Between January 20, 1950 and February 28, 1951, the Commission noted 8,286 column inches of war claims items .... As noted previously, the Philippine press has given extensive coverage to the activities of the War Claims Commission as they relate to Philippine claimants” (p. 14).

<sup>36</sup> National American Ex-POW Association, Inc., and the Center for Civilian Internee Rights, Inc., *A Legislative Prospectus on American Civilian POW’s and Hostages*, 1991.

recognized that the resources of Japan are not presently sufficient, if it is to maintain a viable economy, to make complete reparation for all such damage and suffering and at the same time meet its other obligations.

In addition, Article 14 (b) stated:

Except as otherwise noted in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

Chapter V, Article 16, of the Treaty, which addresses indemnification of Allied prisoners of war, stated:

As an expression of its desire to indemnify those members of the armed forces of the Allied Powers who suffered undue hardships while prisoners of war of Japan, Japan will transfer its assets and those of its nationals in countries which were neutral during the war, or which were at war with any of the Allied Powers, or, at its option, the equivalent of such assets, to the International Committee of the Red Cross which shall liquidate such assets and distribute the resultant fund to appropriate national agencies, for the benefit of former prisoners of war and their families on such basis as it may determine to be equitable.

In Chapter V, Article 19, Japan waived all war claims of Japan and its nationals against the Allied Powers.

Chapter VI, Article 26, of the Treaty, dealing with bilateral treaties of peace stated in part:

Should Japan make a peace settlement or war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty.

Thus in lieu of reparations, certain categories of Japanese assets in neutral countries or in countries with which the Allied Powers were at war, as designated by the Treaty, were liquidated and the money was transferred to the International Committee of the Red Cross, which in turn was to distribute it to the appropriate national agency in each Allied government. Each Allied government was then to distribute it to its POW claimants on an equitable basis. However, since the United States had already paid out money to its POWs via the War Claims Commission, first claim on the \$12.6 million in Japanese assets raised under the Treaty was given to POWs from other Allied countries.<sup>37</sup>

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<sup>37</sup> Information dated Dec. 27, 1999 from William Slany, State Department's Office of the Historian, plus accompanying pages from the International Committee of the Red Cross, from unidentified printed sources.

For information on U.S. renunciation of money due it under Article 16 of the Treaty, see also pp. 4 and 13 of the *Report on the Activity of the International Committee of the Red Cross for the Indemnification of Former Allied Prisoners of War in Japanese Hands* (continued...)

## Survival Rates in Japanese and German WWII Camps

The stark differences in reported death rates for U.S. soldiers and civilians in German vs. Japanese camps dramatize the nature of the experience of Japan's camps for POWs and internees. Dr. Stenger's figures list 93,941 U.S. military personnel captured and interned by Germany, of whom 1,121 died (a little over a 1% death rate), and 27,465 U.S. military personnel captured and interned by Japan, of whom 11,107 died (more than a 40% death rate).<sup>38</sup> The Center for Internee Rights (CFIR), an internee advocacy group, uses the same figures as Dr. Stenger for Nazi POWs and POW deaths. However, CFIR has different figures for POWs of Japan. Using its higher figures for both American POWs held by Japan (36,260) and their higher number of POW deaths (13,851) results in a slightly lower percentage of POW deaths, 38.2%. According to the Center for Internee Rights, of the 4,749 U.S. civilians held by the Germans, 168, or 3.5%, died; in contrast, of the 13,996 American civilian internees they believe were held by Japan, 1,536, or 11 %, died.<sup>39</sup> A similar figure of 13,979 for the total number of American civilian internees held by Japan was compiled by the Army's Office of the Provost Marshal General's Prisoner of War Division.<sup>40</sup>

A recent book by Linda Goetz Holmes, *Unjust Enrichment: How Japan's Companies Built Postwar Fortunes Using American POWs*, offers additional information on POW camp experiences.<sup>41</sup>

Holmes highlights information from British signals sergeant Jack Edwards, who was a POW and became part of a British and American war crimes investigating

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<sup>37</sup> (...continued)

(International Committee of the Red Cross, Geneva, 1971). Page 38 of this document lists the total amount received from Japan plus interest as of Dec. 31, 1970, as being SFr 71,400,288.20 (Swiss francs), which at 1970 exchange rates equaled \$16,543,162.

See also *War Claims Arising Out of World War II*, 83<sup>rd</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 67 (Washington: GPO, 1953), pp. 40-43. This contains the supplementary report of the War Claims Commission on war claims arising out of World War II.

<sup>38</sup> Stenger, *American Prisoners of War in WWI, WWII, Korea ....*

<sup>39</sup> Statistics on WWII POWs and Internees from the Center for Internee Rights, Inc.

<sup>40</sup> *American Civilian Internees Formerly Detained by the Japanese Government*.

<sup>41</sup> Linda Goetz Holmes, *Unjust Enrichment: How Japan's Companies Built Postwar Fortunes Using American POWs* (Mechanicsburg, PA: Stackpole Books, 2001).

Ms. Holmes's book is based on newly declassified U.S. documents at the National Archives, translated WWII Japanese signals intelligence messages found at the National Security Agency's Center for Cryptologic History, International Red Cross documents, documents from the Swiss National Bank, Bank of Tokyo-Mitsubishi, and Federal Reserve Bank of New York, other bank records, study of other Japanese sources, and interviews with over 400 POWs. In May 2000, Ms. Holmes was appointed to the historical advisory panel of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group. See press release at [<http://www.nara.gov/nara/pressrelease/nr00-72.html>], which noted her knowledge of the "history of Japanese war criminality in World War II."

team which in 1946 searched the remains of the Kinkaseki copper mine, Prisoner of War Branch Camp No. 1, Formosa (Taiwan), for evidence.<sup>42</sup> According to Edwards, among the burnt debris of the camp offices he found 15 handwritten transcriptions of broadcast orders dated April 1942 through August 20, 1945 (5 days after the Emperor announced the Japanese surrender), from command headquarters, Tokyo.

Holmes included the text of one of the documents Edwards reportedly found—August 1, 1944, orders from the Japanese vice-minister of war to all POW camp commanders in the occupied territories and home islands. In answer to the question from the head of the POW administration on Formosa asking for clarification as to circumstances under which he should act on his own, according to this document, the vice-minister authorized commanders to kill all the POWs they held if “an uprising of large numbers cannot be suppressed without the use of firearms” or “when escapees from the camp may turn into a hostile fighting force” and “not to allow the escape of a single one, to annihilate them all, and not to leave any traces.”<sup>43</sup> Holmes then cites several specific instances—Wake Island, October 1943; Palawan Island, December 1944; Borneo, June 1945—in which, she writes, camp commanders, believing their camps were soon to be attacked, carried out these orders and massacred all but handful of their POWs.<sup>44</sup> Later in her book Holmes reported the discovery of a copy of a much more official copy of this same execution order in the files of the Japanese Governor General of Formosa, Richiki Ando.<sup>45</sup> Holmes added that documents at the National Archives indicated that although this execution document was not mentioned in open court at the Tokyo War Crimes Trials, it was apparently introduced into evidence in January 1947 by the prosecutor and admitted into evidence by the chief judge without comment as document #2701, exhibit 2015.<sup>46</sup>

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<sup>42</sup> Holmes asserts that, unlike the German industrialists whose detailed and voluminous records were captured by swift moving Allied invasion forces, the Japanese industrialists had ample time between the announcement of the surrender and actual landing of occupation forces almost 3 weeks later to hide, burn, or otherwise destroy evidence. *Ibid.*, pp. 129, 135-136.

<sup>43</sup> *Ibid.*, pp. 115-116, for the full text of this document. For more information on death orders, see also Gavin Daws, *Prisoners of the Japanese: POWs of World War II in the Pacific* (New York: Morrow, 1994), pp. 324-325.

<sup>44</sup> Holmes, *Unjust Enrichment*, pp. 116-117.

<sup>45</sup> *Ibid.*, p. 121.

<sup>46</sup> *Ibid.*, pp. 119-126. The Japanese text and an English translation of this document are on pp. 123-124.

The full text of the Tokyo War Crimes Trials, officially known as the International Military Tribunal for the Far East, can be found in a 22-volume set, titled *The Tokyo War Crimes Trial*, annotated, compiled, and edited by John Pilchard and Sonia Magbuna Zaide (New York: Garland Publications, 1981).



## The Bataan Death March

One of the most notable instances of Japanese brutality towards U.S. POWs occurred after the fall of Bataan in the Philippines. During what came to be known as “The Bataan Death March,” the Japanese military force-marched almost 80,000 starving, sick, and injured Filipino and U.S. troops—the majority Filipino—who had surrendered on Bataan in the Philippines, over 60 miles to prison camps at Camp O’Donnell in April 1942. According to Louis L. Snyder’s account, during these 6 days Japanese soldiers robbed, beat, tortured, and killed marchers at will. After the war Lt. Gen. Masaharu Homma, who commanded Japanese troops at Bataan, was held responsible for Japanese actions and was arrested, tried, and executed by firing squad in April 1946. As with some other WWII statistics, the estimated death toll during this 6-day march varies. Stanley Falk estimates 5,000-10,000 Filipinos were killed plus a maximum of 650 Americans; Louis L. Snyder estimates that 10,000 prisoners, 2,300 of them American, died or were killed.<sup>47</sup> According to retired Army Col. John E. Olsen, who was assigned to tabulate daily strength reports at O’Donnell, of approximately 9,000 U.S. military personnel who survived the march and reached Camp O’Donnell, from April 25 through July 5, 1942, 1,253 or almost 17% died. Of the 50,000 or so Filipino troops at O’Donnell, he says at a rough estimate 25,000 or 50% died.<sup>48</sup>

## “Hell Ships”

Thousands of American POWs were reportedly transported to work in the Philippines, Japan, China, Thailand, and Korea in prison vessels known as “Hell Ships.” Packed so tightly many could hardly do anything but stand in the inadequately ventilated holds of cargo ships, fed almost no food and given little water on trips that lasted sometimes many weeks, U.S. POWs were reportedly also subject to attack when their prison ships, unmarked in violation of international law, were attacked by U.S. submarines.<sup>49</sup> Holmes writes in *Unjust Enrichment* that her research shows that these ships were owned and operated by Japanese companies, many of

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<sup>47</sup> Stanley L. Falk, *Bataan, the March of Death* (Norwalk, CT: Easton Press, 1962). See pp. 194-200 for discussion of his process of estimating the number of deaths.

Snyder, *Historical Guide to World War II*, pp. 68-69.

Louis Morton, *The Fall of the Philippines*, Office of the Chief of Military History, Dept. of the Army, 1953, p. 467 (United States Army in World War II. The War in the Pacific). The volume covering the fall of the Philippines in the multi-volume official Army history of WWII, which covered each action by the Army in minute detail, devotes only one paragraph to the Bataan Death March, noting in a footnote that “The individual surrender of units and the death march are not treated in this volume since they did not affect the course of military operations on Bataan.” The footnote then refers the reader to what was then Stanley L. Falk’s M.A. thesis, entitled “The Bataan Death March.”

<sup>48</sup> John E. Olson, *O’Donnell: Andersonville of the Pacific* (Lake Quivara, KS: John E. Olson, 1985), pp.1-6.

<sup>49</sup> “Striking Back at Japan, Inc.,” *TIMEAsia*, Aug. 16, 1999.

See [<http://www.time.com/time/asia/asia/magazine/1999/990816/payback1.html>]. See also Holmes, *Unjust Enrichment*, p. 38.

which were transporting POWs to work in their owners' businesses. She reports that Japanese records showed there were a total of 69 Japanese merchant ships that transported POWs — 48 made trips to their destination without attack, but another 21 were torpedoed.<sup>50</sup> According to Holmes's research, at least 17 of the 69 ships were built, owned, and operated by Mitsubishi, and other primary owners were Mitsui, Kawasaki, and Yamashita Kisen.<sup>51</sup> According to one news source, the greatest loss of life apparently occurred when the *Arisan Maru*, holding 1,800 U.S. POWs, was torpedoed by the U.S.S. *Snook*, killing all but five POWs.<sup>52</sup> Another attack with major POW losses was the torpedo attack by the submarine U.S.S. *Paddle* on the *Shinyo Maru*, which reportedly resulted in the deaths of all but 82 of the 750 U.S. POWs packed into her hull. There were reports of survivors in the water being shot by Japanese guards. Holmes adds, "... of 55,279 Allied POWs transported by sea, 10,853 drowned, including 3,632 Americans. At least 500 POWs perished at sea of disease and thirst."<sup>53</sup> According to another account, five POW ships were sunk by U.S. ships and planes, resulting in the deaths of about 5,000 U.S. POWs.<sup>54</sup> A different accounting in a recent book on POW ships by historian Gregory F. Michino lists a total of 156 voyages made by 134 ships from 1942-1945, which resulted in the transportation of 126,064 POWs from several nations and in the death of 21,039 of them.<sup>55</sup>

## POWs Made to Perform Forced Labor

Until now, researchers who have lacked access to Japanese government and private company records have not known how many people Japanese firms used as forced laborers. Some historians have speculated that there were approximately 700,000 Koreans, 40,000 Chinese, and hundreds of thousands of other Asians who were used as slave laborers. They guessed that perhaps half of the 140,000 Allied POWs captured by the Japanese were forced to work.<sup>56</sup>

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<sup>50</sup> Holmes, *Unjust Enrichment*, p. 33.

<sup>51</sup> *Ibid.*, pp. 84, 155.

<sup>52</sup> "Thousands Died in Hell Ships," *Associated Press*, Sept. 8, 2000, story posted on the *St. Augustine Record's* Web site at [[http://staugustine.com/stories/090800/nat\\_20000908.029.shtml](http://staugustine.com/stories/090800/nat_20000908.029.shtml)].

See also the listing for the U.S.S. *Snook*, confirming her sinking of the *Arisan Maru* on Oct. 24, 1944, in the *Dictionary of American Naval Fighting Ships*, vol. VI, (Washington: Naval History Division, Dept. of the Navy, 1976), p. 540.

<sup>53</sup> Holmes, *Unjust Enrichment*, p. 33.

<sup>54</sup> "Torpedo Survivors Gather in Fla," *AP Online*, Sept. 8, 2000. Available through NEXIS Library: NEWS File: ALLOWS.

See listing for U.S.S. *Paddle's* sinking of the *Shinto Mary* on Sept. 7, 1944, in *Dictionary of American Naval Fighting Ships*, vol. V, p. 198.

<sup>55</sup> Gregory F. Michino, *Death on the Hellships: Prisoners at Sea in the Pacific War* (Annapolis, MD: Naval Institute Press, 2001), pp. 309-317.

<sup>56</sup> "Slave Labor Is Japan's Forgotten Holocaust, Litigation: Former Allied Prisoners of War, (continued...)

Holmes in *Unjust Enrichment* compiled a list from Japanese sources of 50 Japanese firms which “are known,” she said, to have used American prisoners from 1942 to 1945.<sup>57</sup> Of these firms, she reported that the biggest users of American POWs were Mitsui, Mitsubishi, and Nippon Steel. Others on her list included Showa Denko and Kawasaki Heavy Industries.<sup>58</sup> These companies have been the focus of recent suits by POWs seeking payment for their forced labor.

According to Holmes’s research, approximately 25,000 U.S. POWs were forced to labor for Japanese companies.<sup>59</sup> POWs reportedly were sent to work in the Japanese home islands, Formosa (Taiwan), northeast China, Manchuria (Manchukuo), and Korea. American POWs reportedly were also sent to work on the infamous Burma-Siam railway project and later shipped to Japan.<sup>60</sup> Holmes reported that of the 61,000 POWs working on the Burma-Siam Railway, which included the “Bridge on the River Kwai,” 13,708 died; of the 668 Americans working on the Bridge, 133 died.<sup>61</sup> According to Holmes’s book, of the 25,000 American POWs doing forced labor, over 4,100 died, mainly at the hands of the employees of the companies that U.S. POWs were forced to work for rather than the Japanese military.<sup>62</sup>

Holmes’s research indicates that Japanese companies paid the military a daily fee for use of each POW.<sup>63</sup> In addition, companies were supposed to pay each POW

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<sup>56</sup> (...continued)

Asian Slave Laborers, ‘Comfort Women’ and Others Are Seeking Tens of Billions of Dollars in Reparations from Japanese Firms,” *Baltimore Sun*, July 9, 2000, p. 6C.

<sup>57</sup> Holmes, *Unjust Enrichment*, pp.149-150. In his preface (p. xiii), Bruce Lee put the number of Japanese companies using U.S. POWs and civilian internees as forced laborers at 79.

<sup>58</sup> *Ibid.*, pp. xvii-xxii.

<sup>59</sup> *Ibid.*, p. xvii. Depending on whether just POWs or POWs and civilians are counted, different totals can be reached. In a phone conversation (Oct. 10, 2001), Ms. Holmes referred to a high figure of over 36,000 that was compiled by the advocacy group, Center for Internee Rights.

<sup>60</sup> Holmes, *Unjust Enrichment*, p. xviii.

<sup>61</sup> *Ibid.*, p. 93. See also “Tribute: U.S. Honors ‘Death Railway’ Prisoners; Ambassador Unveils Plaque at River Kwai,” *Bangkok Post*, Sept. 15, 1997, p. 3. Sailors from the U.S.S. *Houston* and artillerymen from the “Lost Battalion,” captured in Indonesia, worked on the “Death Railway.” According to this *Bangkok Post* article, of the 688 U.S. POWs working on the railway, 356 died “from disease, starvation and brutality inflicted by Japanese prison guards.”

<sup>62</sup> *Ibid.*, p. xxi, pp. 48-49, 69, 73.

<sup>63</sup> *Ibid.*, p. 27, gives one instance in which the Japanese Home Ministry monthly report of September 1942 records payment of two yen per day per man from direct employers of war prisoners that was given to the Army, used for national defense, or POW recreation equipment.

for each day worked, and although POWs were forced to sign pay sheets saying they received pay, payments to POWs were almost never made.<sup>64</sup>

Although Article 29 of the Geneva Convention specifies that each prisoner was allowed to receive one Red Cross package per week, Holmes's research indicates Red Cross packages, mail, and other care packages, though sent to POWs, were withheld from them or given to Japanese soldiers. She found that many POWs got only one Red Cross package during their 3½ years in prison.<sup>65</sup> According to Holmes, Article 40 of the Geneva Convention stipulates that POWs should be able to send and receive mail, whereas Japanese camp commanders would accept sacks of mail for prisoners but refuse to distribute them. Red Cross boxes containing vital medical supplies were also kept and not distributed to POWs and those trying to keep them alive, Holmes writes.<sup>66</sup>

## **The Blocked POW Relief Fund**

Holmes's research into U.S. WWII documents, Swiss and Japanese banking records, and NSA translations of WWII Japanese signals intelligence also uncovered, she reported, the existence of a fund set up for the relief of Allied POWs working on the Burma-Siam railroad. After secret talks, the governments of the United States, Britain and Sweden (representing the Netherlands) agreed on a plan in which money from each country was to be placed in a Swiss bank account. This money was then to be sent to the International Red Cross for the Allied POWs most in need of relief—those working on the Burmese-Siam railway. In August 1944, the United States contributed 2.8 million Swiss francs, today worth \$57 million dollars, to the account which was also contributed to by Britain and the Netherlands.<sup>67</sup>

According to Holmes, Japan put every obstacle it could in the way of money being disbursed for relief. One of its conditions was that the money be transferred to the Japanese government's official bank, the Yokohama Specie Bank, which was done. Holmes's research indicates that most of these transferred funds, which eventually totaled 98.5 million Swiss francs (worth \$197 million in today's dollars), were not actually used for Allied POW relief as the Japanese promised. A small amount went for POW relief, and the Japanese used 17 million francs to order artillery from the Swiss, an order that was never filled because of the war's end. Some of the money simply disappeared, and the bulk sat in Japan gathering interest.<sup>68</sup> In the 10 years after the war, various countries that contributed to the fund got some or all of their contributions back to disburse to POWs and other claimants or to return to their general treasuries. In 1955, the remaining money was sent from the Yokohama Specie Bank to the International Committee of the Red Cross in Geneva

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<sup>64</sup> Ibid., p. xix.

<sup>65</sup> Ibid., pp. 102, 109.

<sup>66</sup> Ibid., pp. 51-53, 80, 98.

<sup>67</sup> Ibid., pp. 98-112.

<sup>68</sup> Ibid., p. 103.

and divided among 14 beneficiary nations for distribution to their POWs. The United States got back none of the money it had contributed.<sup>69</sup>

## Unit 731

Starting with the 1980 publication of “Japan’s Germ Warfare: The U.S. Cover-up of a War Crime,” in *The Bulletin of Concerned Asian Scholars*, information on alleged Japanese Army biological warfare experiments on POWs has slowly been revealed, contributing to the continuing intensity of the WWII POW issue.<sup>70</sup>

According to Sheldon Harris, there were apparently at least two different chemical and biological warfare units centered in Manchuria, each commanded by a different officer. One organization was Unit 100, with a central headquarters at Changchun, 150 miles south of Harbin: it was commanded by Major, later Major General, Wakamatsu Yujiro. Although, Harris reported, it experimented on humans, it has gotten little attention so far.<sup>71</sup> The experiments about which the most is known are the biological warfare (BW) as well as some chemical warfare (CW) experiments, reportedly directed by a military doctor named Shiro Ishii.<sup>72</sup> From the mid-1930s through 1945, Dr. Ishii, who eventually rose to the rank of Lieutenant General, reportedly directed BW experiment organizations under various names at a number of locations in and around the northern Manchurian city of Harbin, capital

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<sup>69</sup> Ibid., pp. 103-111.

<sup>70</sup> John W. Powell, “Japan’s Germ Warfare: The U.S. Cover-up of a War Crime,” *Bulletin of Concerned Asian Scholars*, vol. 12, no. 4 (Oct.-Dec. 1980), p. 17.

See statement by Han Xiao, China’s leading expert on Unit 731, that U.S. POWs were experimented on in “A Half Century of Denial: The Hidden Truth About Japan’s Unit 731,” *U.S. News and World Report*, vol. 119, no. 5 (July 31, 1995), p. 56.

See “Japan Rebuffs Requests for Information about Its Germ-Warfare Atrocities,” *New York Times*, Mar. 4, 1999, sec. A, p. 12, for the statement, “It is still not established, for example, whether American prisoners of war were among those experimented on.”

<sup>71</sup> Sheldon Harris, *Factories of Death: Japanese Biological Warfare, 1932-1945, and the American Coverup* (London, New York: Routledge, 1994), pp. 83-100.

<sup>72</sup> “In Search of Buried Poison,” *Newsweek*, July 20, 1998, p. 27. A chemical warfare unit about which little is known at the present time was Unit 516, headquartered at Qiqihar in northeast China.

In 1999 the Japanese government signed an agreement with China which pledged that Japan would be responsible for demilitarizing what Japan says are some 700,000 or more shells filled with CW agents left in China after Japanese forces withdrew after their defeat in WWII. China puts this figure at 2,000,000 shells. China had claimed that these live munitions had injured or killed over 2,000 Chinese who had accidentally encountered them since 1945. See “Gov’t Oks Use of Articles for Weapons Disposal in China,” *Japan Weekly Monitor*, Apr. 24, 2000 (online). Available through NEXIS Library: NEWS File: CURNWS.

“Japan, China OK Chemical Arms Cleanup,” *Asahi News Service*, Aug. 2, 1999 (online). Available through NEXIS Library: NEWS File: CURNWS.

“Cleaning Up a Poisonous China,” *The Japan Times*, Aug. 15, 1998 (online). Available through NEXIS Library: NEWS File: CURNWS.

of Heilongjiang province. His main organization, Unit 731, was based in Manchuria, 15 miles south of Harbin at Ping Fan.<sup>73</sup> The base at Ping Fan had a perimeter of almost four miles, an airfield, and a rail spur from Harbin, 150 buildings, and 3,000 employees.<sup>74</sup> Ping Fan was declared a Special Military Region and was very securely fortified and guarded.<sup>75</sup>

Three books have been written about the activities of Unit 731, and it has been the subject of frequent mentions in U.S. newspaper articles in the late 1990s. A one-hour television documentary on Unit 731, entitled *History Undercover: Unit 731, Nightmare in Manchuria*, was broadcast on the History Channel on March 7, 1999, and was rebroadcast an additional three times.<sup>76</sup> Books have been written about Unit 731 in Japan, former members have come forward to tell of their activities, and a traveling exhibit about it has been seen by some 200,000 Japanese.<sup>77</sup>

Ongoing private investigations by scholars have described Unit 731 as spreading disease and causing epidemics in field experiments that may have killed tens or even hundreds of thousands of Chinese.<sup>78</sup> Although exact numbers are unknown, various

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<sup>73</sup> Sheldon Harris quotes Lt. Gen. Kajitsuka Ryuji, Lt. General in the Medical Service and former Chief of the Medical Administration of the Kwantung Army, as saying that he saw an imperial decree giving Ishii permission to start the initial BW operation in Manchuria in 1936 “by Command of the Emperor” and that later on Emperor Hirohito also issued a decree authorizing creation of Unit 731. Prince Mikasa, the emperor’s brother, also reportedly inspected the work at Pingfan in 1943. Harris, *Factories of Death*, pp. 40, 142.

See also “A Half Century of Denial,” *U.S. News & World Report*, July 31, 1995, p. 56.

<sup>74</sup> Harris, *Factories of Death*, pp. 33-35.

“Bacteriological Warfare Museum to Open in Harbin Next June,” Asian Political News (online). Available through NEXIS Library: NEWS File: CURNWS. According to news accounts, in June 2001 the Chinese plan to open to the public part of a “Unit 731 Bacteriological Warfare Museum” in Harbin and to ask that the U.N. Educational, Scientific, and Cultural Organization (UNESCO) put this site on its World Heritage list.

<sup>75</sup> *Ibid.*, pp. 31-56.

<sup>76</sup> Information on the History Channel Web site [<http://www.historychannel.com/>] and from discussion with AETV customer relations representative, Dec. 3, 1999. This program can be ordered through the History Channel Web site.

<sup>77</sup> “‘Japan’s Auschwitz’ Revealed; Nation Confronts Unit 731’s Cruelty.” *Phoenix* [Ariz.] *Gazette*, Sept. 30, 1994, p. A6.

Japanese language books on Unit 731 include Seiichi Morimura’s 1981 *The Devil’s Gluttony*, a three-volume fictional narrative based on historical research, and Keiichi Tsuneishi’s later book, *The Biological Warfare Unit That Disappeared*.

“Wartime Skeletons Return to Haunt Japan: Human Remains Found on a Tokyo Building Site Have Revived the Ghosts of Japan’s Experiments with Biological Weapons,” *New Scientist*, Feb. 25, 1995, p. 12.

<sup>78</sup> “Japanese War Crimes Are Still Coming to Light; The So-Called ‘Asian Holocaust’ Was Covered Up by the Americans, Some Experts Say,” *Orlando Sentinel*, Mar. 14, 1999, p. A6.

According to Qiu Mingxuan, a Chinese epidemiologist who recently testified in a  
(continued...)

researchers have alleged that Unit 731 performed laboratory experiments on somewhere between 850 to 10,000 or more subjects, and that none of them survived.<sup>79</sup> According to author Sheldon Harris, victims consisted mostly of Han Chinese inhabitants of the area around Harbin but also included stateless White Russians, Harbin Jews, criminals, communist guerrillas or spies, Mongolians, Koreans, the mentally handicapped, and also Soviet soldiers captured in border skirmishes.<sup>80</sup> Newspaper articles also state that Allied soldiers, possibly including some Americans, might have been experimented on.<sup>81</sup>

Experiments on humans reportedly not only included infection with anthrax, typhoid, and other infectious diseases but also live dissection of prisoners without anesthesia, exposing prisoners to low air pressure, freezing of prisoners, removal of limbs, blood, and organs (often without anesthesia) to see the results, exposing humans to fragmentation rounds containing infectious agents, and other experiments.<sup>82</sup>

## Reports of Experimentation on POWs

News accounts have indicated that possibly as many as 1,500 U.S. POWs, many of them survivors of the Bataan Death March, were among Allied POWs sent to a POW camp at Mukden (also known as Shenyang) in Manchuria, more than 300

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<sup>78</sup> (...continued)

Japanese court about Unit 731's biological warfare in China during WWII, the most conservative estimates are that 270,000 people were made ill and that 50,000 people died as a result of Unit 731's spreading plague, cholera, typhus, anthrax, and dysentery. *Newsweek*, Feb. 12, 2001, p. 56.

<sup>79</sup> "Death Factories," *New York Times Book Review*, Jan. 23, 2000, p. 22. A low estimate of 850 POW experimentees is cited in this book review of *The Biology of Doom: The History of America's Secret Germ Warfare Project*.

See "Japan Rebuffs Requests for Information," *New York Times*, Mar. 4, 1999, for an estimate of 10,000.

<sup>80</sup> Harris, *Factories of Death*, p. 49.

<sup>81</sup> See "Human Guinea Pigs 'Advanced Medical Science'; Japan, the Shame of Unit 731," *The Independent* (London), Apr. 16, 1995, p. 14, for information on a former Unit 731 member who said he saw specimen jars of organs labeled Chinese, Korean, and later Russian, American, French, and British.

See "Japanese Doctor Lectures as Penance for Horrors Inflicted on War Prisoners," *The Washington Times*, May 21, 1995, p. A1, for the allegation that American, Australian, British, Chinese and Russian POWs were injected with tetanus, anthrax, bubonic plague and other germs.

See also "A Half Century of Denial," *U.S. News & World Report*, for a statement by Chinese Unit 731 expert Han Xiao that American POWs at Mukden were injected with bacteria to test their immunity.

<sup>82</sup> Harris, *Factories of Death*, pp. 57-82.

miles southwest of Harbin.<sup>83</sup> The first testimony by a U.S. POW about his experiences at Mukden apparently occurred in the brief testimony of Warren W. Whelchel in a 1982 field hearing on Veterans Administration health care in Montana. At the hearing, Whelchel testified that different men were given different injections and, thereafter, the Japanese took careful note of each man's condition.<sup>84</sup>

At a half-day hearing of the Compensation Subcommittee of the House Veterans Affairs Committee, held in 1986 on treatment of U.S. POWs in Mukden, much of the discussion focused on compensation issues. There were four witnesses at the 1986 hearing, only one of whom was a former POW. The first witness, John H. Hatcher, Chief of Army Records Management and Army Archivist, testified that no primary records had been found by the Army dealing with what might have happened at Mukden and that Japanese Army records which could have contained such information had been returned unread to Japan. He stated that the Army had no records which could confirm or deny claims that had been made (p. 7-16). Former POW James Frank, the second witness, testified that he had been sent to Mukden and that he believed he had been experimented on. He described what he saw when he was assigned to help Unit 731 personnel with autopsies of those who died and he stated that Unit 731 functionaries were interested in only certain of the dead POWs. He also testified that after he had been liberated, he and others had been required by the Army to sign papers promising not to reveal what had gone on at the camp under penalty of court martial.<sup>85</sup> He also spoke of the difficulty in getting the VA to accept claims for illnesses he believed were caused by his time at Mukden when the VA said no medical records of such time existed (p. 16-24).

The third witness at the 1986 hearing, Greg Rodriguez, Jr., was the son of a deceased POW and had previously testified at the 1982 hearing in Montana. He stated he believed his father's many ailments stemmed from being experimented on at Mukden, talked of his father's struggle to get veterans' benefits and about the records the son had found about Mukden (p. 24-32). The last witness, William Triplett, who had written a book focusing on involvement of Unit 731 personnel in the Tokyo Imperial Bank murders in 1948, said that in his research he had found declassified DOD documents which he believed attested to the existence of Unit 731, to the fact that it performed biological warfare experiments on human beings, and that Army occupation officials knew about these facts when dealing with former members of Unit 731. He quoted from a State Department memorandum that was part of a U.S. War Department Judge Advocate General document, which said, "It should be kept in mind that there is a remote possibility that the independent investigation conducted by the Soviets in the Mukden area may have already disclosed evidence that American prisoners of war were used to experimental purposes of a BW nature and that they lost their lives as a result of these

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<sup>83</sup> "Ex-POWs Suspect Germ Test Cover-Up; Japan and the U.S. Say the Records of the WWII Experiments Were Destroyed," *Austin American-Statesman*, Mar. 31, 1995, p. A18.

<sup>84</sup> U.S. Congress, House, Veterans' Affairs Committee, Subcommittee on Oversight and Investigations, *Veterans Administration Programs in Montana*, hearings, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 1982 (Washington: GPO, 1982), p. 19.

<sup>85</sup> For an example of one such gag order, see Holmes, *Unjust Enrichment*, pp. 145-146.



experiments” (p. 34-35).<sup>86</sup> Mr. Triplett stated that he believed that the government was in possession of records about what happened to POWs at Mukden that could help the VA in diagnosing POWs’ ailments (pages 32-37).<sup>87</sup> Since 1994, there have been newspaper accounts discussing the experiences of several American POWs who were interned at Mukden.<sup>88</sup>

In his 1994 book, *Factories of Death*, Sheldon Harris analyzed the fragmentary and sparse available data and concluded that “... the evidence, while inconclusive, suggests strongly that they [U.S. POWs] were not” [among those] “subjected to human BW experiments at Mukden.”<sup>89</sup>

In *Unjust Enrichment*, Linda Goetz Holmes lays out in much more detail than Harris the reported incidents that led to POWs claims that they were experimented on at Mukden and elsewhere.<sup>90</sup>

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<sup>86</sup> Several such statements are cited in material inserted into the *Congressional Record* on Nov. 10, 1999, by Sen. Feinstein, in her remarks introducing S. 1902, the Japanese Imperial Army Disclosure Act of 1999. See *Congressional Record*, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., (Nov. 10, 1999), pp. S14541-S14547.

<sup>87</sup> U.S. Congress, House, Veterans Affairs Committee, Subcommittee on Compensation, Pension, and Insurance, *Treatment of American Prisoners of War in Manchuria*, hearings, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., Sept. 17, 1986 (Washington: GPO, 1986), p. 16.

<sup>88</sup> “Secret File: Japanese Scientists Experimented on U.S. Prisoners,” *Orlando Sentinel*, Aug. 15, 1995, p. A1.

See also “Truth Emerging on Ailing POWs, Japan Germ Unit,” *Los Angeles Times*, March 20, 1995, p. A1.

<sup>89</sup> *Ibid.*, p. 130.

The one reported instance of punishment for vivisection of American POWs was that of the trial and conviction of several doctors from the anatomy department of Kyushu University who dissected captured U.S. crewmen of a B-29 which crashed on May 5, 1945. Of the dozen U.S. airmen who parachuted down, at least nine were taken into custody. All but the crew’s captain, who was sent to Tokyo for interrogation, were subjected to vivisection experiments similar to those done at Unit 731. Thirty people were brought to trial by the Allied war crimes tribunal in Yokohama on Mar. 11, 1948, on charges of vivisection, wrongful removal of body parts, and cannibalism. Of the accused, 23 were found guilty of various charges (cannibalism charges were dismissed for lack of proof), five were sentenced to death, four to life imprisonment, and the rest to shorter terms. In Sept. 1950, General MacArthur reduced most of the sentences and by 1958 all those convicted were free. None of the death sentences was carried out. “Japan Admits Dissecting WWII POWs,” *The Denver Post*, June 1, 1995. p. A2.

<sup>90</sup> Holmes, *Unjust Enrichment*, pp. 84-91. “After interviewing dozens of ex-POWs from the Mukden complex, it seems apparent to this writer that on several occasions, medical personnel from elsewhere were allowed to visit the POW hospital and some barracks at the Mitsubishi Mukden camps, and that after they left, a certain number of POWs became very ill or subsequently died in a short time. It is equally apparent that many ex-POWs who were at Mukden were not aware of, or suspicious about, unusual medical activity, but this is not surprising. The Japanese doctors had a lot of subjects to choose from; Mitsubishi brought over 2,000 Allied prisoners to its base camp at Mukden of whom the majority, 1,485, were Americans.” Holmes also referred to other POWs in Japan and Taiwan who also thought

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## U.S. Agreement Not to Prosecute Unit 731 Members

One of the most persistent allegations surrounding Unit 731 is one made in the initial 1980 article, “Japan’s Germ Warfare: The U.S. Cover-up of a War Crime” (in *The Bulletin of Concerned Asian Scholars*), in Harris’s *Factories of Death*, and elsewhere—that General Ishii and his staff were given immunity against prosecution as war criminals by the United States in exchange for the scientific information gathered during Unit 731’s experiments. In a letter to Rabbi Abraham Cooper of the Simon Wiesenthal Center in Los Angeles, dated December 17, 1998, Eli M. Rosenbaum, Director of the Department of Justice’s Office of Special Investigations, indicated that such a deal was struck. Mr. Rosenbaum wrote that “Two of these [formerly classified] reports [about biological warfare data collected by the Japanese and the arrangement made between the United States and Lieutenant General Shiro Ishii, the commander of Unit 731], dated November 17, 1981, and May 5, 1982, confirm that Ishii and his colleagues received immunity from prosecution and that, in exchange, they provided a great deal of information to U.S. authorities.”<sup>91</sup>

According to news accounts, Gen. Ishii returned to Japan after the war where he was permitted to continue medical research, was paid a Japanese government pension, and died of cancer in 1959.<sup>92</sup> Moreover, many of Ishii’s chief lieutenants occupied prominent positions in post-war Japanese society.<sup>93</sup> According to one news

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<sup>90</sup> (...continued)

that they had been experimented on.

<sup>91</sup> Letter dated Dec. 17, 1998, on Department of Justice Criminal Division stationery, headed “RE: U.S. Non-Prosecution of Japanese War Criminals” and sent to Rabbi Abraham Cooper, Associate Dean, Simon Wiesenthal Center, Los Angeles, CA. Copy faxed to the author on July 5, 2000 by Eli M. Rosenbaum, Director, Office of Special Investigations, Department of Justice.

<sup>92</sup> “Lawyers Target Japanese Abuses; WWII Compensation Effort Shifts From Europe to Asia,” *Washington Post*, Mar. 5, 2000, p. A1.

See also “High-Stakes Conflict Brings Out the Most Inhumane Research,” *The San Diego Union-Tribune*, Aug. 9, 1995, p. E1.

See “Japan Confirms WWII Tests on Humans,” *United Press International*, Apr. 17, 1982. Available through NEXIS Library: NEWS File: ALLNWS. Japanese Social Welfare Ministry official Kikuo Moriyama states that Lt. General Shiro Ishii received \$90,000 in government pension payments until his death.

<sup>93</sup> “Japan Blood Supplier, Facing HIV Penalty, to Be Acquired,” *New York Times*, Feb. 25, 1997, p. D7. For example, according to this article, Ryoichi Naito, founder and chairman of the Green Cross Corporation, a pharmaceutical company that became the largest producer of blood products in Japan, was one of Ishii’s officers; and Dr. Hisato Yoshimura, who directed Unit 731’s frostbite experiments, became president of Kyoto Medical College and was an advisor to Japan’s Antarctic expedition. According to another *New York Times* article, other Unit 731 members went on to be governor of Tokyo, president of the Japanese Medical Association, and head of the Japanese Olympic Committee. See “Unmasking Horror—A special report; Japan Confronting Gruesome War Atrocity,” *New York Times*, Mar. 17, 1995, p. A1.

“Human Guinea Pigs ‘Advanced Medical Science’; Japan/The Shame of Unit 731,” *The Independent* (London), Apr. 16, 1995, p. 14. This article asserted that members of Unit

(continued...)

account, the several hundred remaining members of Unit 731 were still holding their annual reunion in Japan as of 1999.<sup>94</sup>

## Missing Records

In the 20-year controversy over whether Americans were experimented on, the chief problem has been the lack of documentary evidence to support anecdotal accounts. According to U.S. Army testimony in the 1986 hearing on treatment of U.S. POWs in Mukden, the United States captured the records of the Imperial Army when it occupied Japan. These very hard-to-translate records were brought to this country, remained here for some 13 years largely untranslated and unread, and were then returned to Japan.<sup>95</sup> However, according to a 1999 *New York Times* article, in 1948 the Central Intelligence Agency screened the records before they were turned over to the National Archives. Later, 5% of the records were hurriedly microfilmed by a group including scholars from Harvard and Georgetown University, between the time they were ordered returned to Japan in 1957 and when they were actually put on a boat in February 1958.<sup>96</sup> Japan has denied access to these records to those trying to document the actions of Unit 731.<sup>97</sup> Author Sheldon Harris is quoted in the *New York Times* article as saying that he learned from Freedom of Information Act requests for military debriefing records dealing with this issue that relevant records were lost in the fire at the St. Louis Military Personnel Records Center in 1973.<sup>98</sup> In 1995 an article in the *Washington Times* quoted Ken McKinnon, spokesman for the Department of Veterans Affairs, as saying, “The Veterans Administration has never seen evidence that research was done on U.S. POWs. We would be more than willing to see new information on how POWs were treated and review the causes of injury and death.” Mr. McKinnon said that the VA depends on DOD for analysis and documentation in this area. The article then went on to say that a Pentagon

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<sup>93</sup> (...continued)

731 served in senior positions in the National Hygiene Institute, the Ground Self-Defence Forces Medical School, and the universities of Tokyo, Kyoto, and Osaka.

<sup>94</sup> “Commentary; Tokyo Must Address the Actions of its Wartime ‘Killing Machine’; War Crimes; Japan Conducted Medical Experiments on Prisoners; This Issue Has Never Been Publically Examined,” *Los Angeles Times*, Apr. 26, 1999, part B5.

<sup>95</sup> Veterans’ Affairs Committee, *Treatment of American Prisoners of War in Manchuria*, p. 9.

<sup>96</sup> “The Secret History of World War II—Third in a Series of Occasional Articles—Calling Japan to Account,” *Boston Globe*, May 31, 2001, p. A1.

<sup>97</sup> “Japan Rebuffs Requests for Information ...,” *New York Times*, Mar. 4, 1999, p. A12. Statement by Japanese Embassy spokesman Tsuyoshi Yamamoto that his government would not comment, because this matter concerned “... the specifics of Japanese cooperation with the United States, which are of a diplomatic nature.”

See also “Revisiting World War II Atrocities; Comparing the Unspeakable to the Unthinkable,” *New York Times*, Mar. 7, 1999, sec. 4, p. 4.

<sup>98</sup> See the VA Fact Sheet, “Facts About the 1973 St. Louis Fire and Lost Records,” available at the VA Web site [<http://www.va.gov/pressrel/stlouis.htm>] about the fire that took place.

spokesman said he had never heard about U.S. POWs and the germ-warfare experiments at Mukden.<sup>99</sup>

## Efforts to Obtain an Apology

Several times since the end of WWII, Japanese government officials made statements that they regarded as an apology for their conduct in WWII, but that other nations did not accept as a full, direct, and unambiguous apology.<sup>100</sup> These statements have evolved. In 1989, Prime Minister Noboru Takeshita stated that, “We cannot say in affirmative terms whether the Japanese state was an aggressor nation. That is a matter for future historians to judge.”<sup>101</sup> But, in 1991, on the 50<sup>th</sup> anniversary of the Japanese attack on Pearl Harbor, Japanese Prime Minister Kiichi Miyazawa apologized to the United States by expressing his “deep remorse ... that we inflicted an unbearable blow on the people of America and the Asian countries.”<sup>102</sup> In 1992, Prime Minister Kiichi Miyazawa apologized to the people of the Asia-Pacific Region, saying, “During a period in the past, the people of the Asia-Pacific region experienced unbearable suffering and pain due to our country’s behavior. I would like to express again deep remorse and regret.” According to the article citing his apology, this apology to the people of the Asia-Pacific region was the first apology by a Japanese prime minister in a policy speech. A senior government official said that this apology to the people of the Asia-Pacific region was also meant to apply to the United States. However, a month before this apology, the Japanese parliament rejected a bill which called specifically for a Japanese apology on the anniversary of the attack on Pearl Harbor.<sup>103</sup> In August 1993, Japanese Prime Minister Morihiro Hosokawa stated that the Japanese “... state clearly before all the world our remorse at our past history and our renewed determination to do better.”<sup>104</sup>

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<sup>99</sup> “GIs Tell of Germ Horrors in Japan,” *Washington Times*, Mar. 10, 1995, p. A17.

<sup>100</sup> “WWII Apology Fails to Find a Voice in Japan; Asia: Lower House Approves A Statement on War Actions That Wins Praise Neither at Home nor Abroad,” *Los Angeles Times*, June 10, 1995, p. A12.

“Asia Underwhelmed by Japan’s Apology; Statement on WWII Gets Tepid Reaction Elsewhere, But Could Play Well Politically at Home,” *Washington Post*, Aug. 16, 1995, p. A21.

“Lawyers Target Japanese Abuses; WWII Compensation Effort Shifts From Europe to Asia,” *Washington Post*, Mar. 5, 2000, p. A1.

<sup>101</sup> “Sorry? Japan Has Been Talking of Apology in the Approach to Today’s Anniversary of Its Attack on Pearl Harbor: But Does It Actually Go Any Deeper Than Talk?” *The Daily Telegraph* (London), Dec. 7, 1991, p. 15.

<sup>102</sup> “Miyazawa Expresses ‘Remorse’; Japanese Premier Calls Pearl Harbor ‘Unbearable Blow,’” *Washington Post*, Dec. 7, 1991, p. A1.

<sup>103</sup> “Miyazawa Proclaims 1992 Test Year for Japan’s Int’l Role,” *Kyodo News Service, Japan Economic Newswire*, Jan. 24, 1992 (online). Available through NEXIS Library: NEWS File: ALLNWS.

<sup>104</sup> “Japan Makes First Apology for Conduct in WWII,” *The Boston Globe*, Aug. 15, 1995, (continued...)

In 1994 the Japanese Foreign Ministry apologized for the “deeply regrettable” conduct of failing to break off diplomatic relations before their attack on Pearl Harbor. However, a Japanese Foreign Ministry spokesman said that this apology was to the Japanese people and not to the people of the United States.<sup>105</sup>

On August 15, 1995, Japanese Prime Minister Tomiichi Murayama made the following statement, “During a certain period in the not too distant past, Japan, following a mistaken national policy, advanced along the road to war, only to ensnare the Japanese people in a fateful crisis, and through its colonial rule and aggression caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations.” He went on to say, “In the hope that no such mistake be made in the future, I regard, in a spirit of humility, these irrefutable facts of history, and express here once again my feelings of deep remorse and state my heartfelt apology.”<sup>106</sup> However, some observers pointed out that he made his apology in the first person, on his behalf, and not that of Japan.<sup>107</sup> This statement was not seen as adequate by various victims’ groups because, they said, it was not endorsed by the Japanese parliament.<sup>108</sup> According to newspaper accounts Prime Minister Murayama’s apology obtained a tepid reaction in Asia.<sup>109</sup> Speaking to veterans in Honolulu on the 50<sup>th</sup> anniversary of V-J Day, a few days after Murayama’s remarks, President Clinton said, “...let me say especially how much the American people appreciate the recent powerful words of the Japanese Prime Minister, Mr. Murayama, when he expressed his nation’s regret for its past aggression and its gratitude for the hand of reconciliation that this, the World War II generation, extended 50 years ago.”<sup>110</sup>

In her September 8, 2001, speech given on the 50<sup>th</sup> anniversary of the signing of the Multilateral Treaty of Peace with Japan in San Francisco, Japanese Foreign Minister Makiko Tanaka echoed the statement of Murayama by saying, “Facing the facts of history in a spirit of humility, I reaffirm today our feeling of deep remorse and heartfelt apology expressed in Prime Minister Murayama’s statement of 1995.”

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<sup>104</sup> (...continued)

p. 1.

<sup>105</sup> “Japan Apologizes to Itself for Pearl Harbor; ‘Deeply Regrettable’ Lapse by Diplomats Said to Have Brought Shame to the Country,” *Washington Post*, Nov. 22, 1994, p. A23.

<sup>106</sup> “Premier of Japan Offers ‘Apology’ for Its War Acts,” *New York Times*, Aug. 15, 1995, p. A1.

<sup>107</sup> “Japanese Apology Still Falls Short [editorial],” *Omaha World Herald*, Aug. 19, 1995, p. 46.

<sup>108</sup> “Lawyers Target Japanese Abuses,” *Washington Post*, Mar. 5, 2000, p. A1.

<sup>109</sup> “Asia Underwhelmed by Japan’s Apology; Statement on WWII Gets Tepid Reaction Elsewhere, But Could Play Well Politically at Home,” *Washington Post*, Aug. 16, 1995, p. A21.

<sup>110</sup> “Clinton Thanks Japan for WWII Apology; Vets Praised for Spirit of Reconciliation,” *Washington Times*, Sept. 2, 1995, p. A1.

*Public Papers of the Presidents: William J. Clinton*, remarks at the Joint Service Review ..., Honolulu, HI, Sept. 1, 1995 (Washington: GPO, 1996, 1995: Book II), p. 1278.

She also said in her speech, without elaboration, that the war has left an incurable scar on many people, including former prisoners of war—apparently the first such mention of POWs.<sup>111</sup> According to newspaper accounts, many protestors, Chinese-American groups, former U.S. prisoners of war, and others staged a conference demanding apologies and reparations from Japan. Speaking of reparations, Tanaka told reporters that based on the Peace Treaty, “the entire issue was settled.” Secretary of State Colin Powell, who joined in the celebration, said, “The treaty dealt with the matter 50 years ago,” but added, “at the same time we have the utmost compassion for the veterans who suffered.”<sup>112</sup> Powell is also quoted as saying, “It is the United States position that those claims were extinguished in the San Francisco Treaty.”<sup>113</sup>

## Efforts to Obtain More Compensation — Congressional

In the years since the War Claims Commission’s payments, POW/internee groups have tried various approaches to obtain more compensation either directly from Japan or from the United States. For instance, in the 98<sup>th</sup> Congress, H.R. 3188 was introduced, which proposed permitting Bataan Death March prisoners held afterwards as Japanese POWs to sue in the U.S. Court of Claims. The Justice Department testified in opposition to the bill, citing numerous reasons why giving these POWs ability to sue the Japanese government or the U.S. government over this issue would violate established case law, international law, the Feres Doctrine (which disallows suits by members of the military for damages received while in the military), and the established jurisdiction of the U.S. Court of Claims; there was no floor action on this bill.<sup>114</sup> In the 101<sup>st</sup> Congress, S. 3191, the Civilian Ex-Prisoner of War Health Benefits Act of 1990, was introduced but had no floor action.

In the 104<sup>th</sup> Congress, H.Con.Res. 176, calling on Japan to pay reparations and express formal regret to U.S. POWs and civilian internees, was introduced, but there was no hearing and no floor action on this concurrent resolution. H.R. 3084, the Former Civilian Prisoners of War Benefits Act of 1996, dealing with providing medical care and disability benefits for former civilian prisoners of war, was also introduced in the 104<sup>th</sup> Congress, but no floor action occurred.

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<sup>111</sup> “Japan Falls Short on War Apology; Memorial: The Foreign Minister’s Comments at a 50-year Celebration of Treaty Signing in San Francisco Disappoint Thousands of Ex-POWs,” *Los Angeles Times*, Sept. 9, 2001, pt. 2, p. 6.

<sup>112</sup> “War Memories Mar Peace Observance; Treaty with Japan Is 50 Years Old but Victims Can’t Forget,” *San Francisco Chronicle*, Sept. 9, 2001, p. A1.

<sup>113</sup> “Powell, Tenneco Reject Calls for War Reparations from Japan,” *Agency France Press* Sept. 8, 2001 (online). Available through NEXIS Library: NEWS File: CURNWS.

<sup>114</sup> U.S. Congress, House, Judiciary Committee, Administrative Law and Governmental Relations Subcommittee, *Permitting Bataan Death March Prisoners to Sue in U.S. Court of Claims*, hearing on H.R. 3188, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 14, 1984 (Washington: GPO, 1984), pp. 25-27.

The 105<sup>th</sup> Congress passed P.L. 105-246, the Nazi War Crimes Disclosure Act which established a Nazi War Criminal Records Interagency Working Group (IWG) with a 3-year term to review and declassify any records which pertained to any person who "... ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." Although the main focus of this law was Nazi Germany, it also applied to "any government that was an ally of the Nazi Government of Germany."<sup>115</sup> In conformance with P.L. 105-246, the President issued Executive Order 13110 of January 11, 1999, which established the IWG. According to a recent account, the IWG has declassified some 1.5 million pages of records dealing with Nazi war crimes, and now the IWG is initiating a second phase, examining records related to Japanese war crimes.<sup>116</sup>

## Action in the 106<sup>th</sup> Congress

**Legislation.** A number of bills and resolutions dealing with compensation for or apologies to POWs, their search for records, or court suits by POWs who were forced to perform labor by Japanese companies in World War II were introduced in 1999-2000. The two bills that passed were the following:

- ! S. 1902 and its companion bill, H.R. 3561, which proposed setting up a temporary interagency working group to search classified and other records of the Japanese Imperial Army held by the United States relating to any person who "ordered, incited, assisted or otherwise participated in the experimentation and persecution of any person because of race, religion, national origin, or political option [sic] during the period beginning September 18, 1931, and ending on December 31, 1948" and releasing those that do not compromise national security. This bill would also apply to any WWII allies of Japan. Although no floor action occurred on S. 1902, a similar but slightly more restrictive provision renaming the existing Nazi War Criminal Records Interagency Working Group (IWG) as the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group<sup>117</sup> and extending the life of the IWG through the end of December 2003 and directing it to search out, recommend for declassification, and make public all appropriate classified Japanese Imperial Government records concerning medical experimentation or persecution was inserted into H.R. 5630, the Intelligence Authorization Act for Fiscal Year 2001, which became P.L. 106-567.<sup>118</sup>

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<sup>115</sup> See Section 3(a)(1) and 3(a)(1)(D) of the Act.

<sup>116</sup> National Coordinating Committee for the Promotion of History, *NCC Washington Update*, vol. 6, no. 21, June 22, 2000, at [<http://www2.h-net.msu.edu/~ncc/>].

<sup>117</sup> The IWG has an informative Web site at [<http://www.nara.gov/iwg/>].

<sup>118</sup> "Bill Could Hamper Investigation into U.S. Knowledge of Japanese Atrocities; Congress: Plans to Extend an Inquiry into the Intelligence Community's WWII Dealings Have Hit a Roadblock, But Historians Vow To Continue Working," *Los Angeles Times*, (continued...)

- ! Late in the second session of the 106<sup>th</sup> Congress, the House and Senate agreed to S.Con.Res. 158, which although it does not have the force of law, expressed the sense of Congress that

... it is in the interest of justice and fairness that the United States, through the Secretary of State or other appropriate officials, put forth its best efforts to facilitate discussions designed to resolve all issues between former members of the Armed Forces of the United States who were prisoners of war forced into slave labor for the benefit of Japanese companies during World War II and the private Japanese companies who profited from their slave labor.<sup>119</sup>

**Hearings.** The Senate Judiciary Committee held a hearing on June 28, 2000, on POW survivors of the Bataan Death March in which several POWs described their experiences. The POWs reported being shipped to Japan on ships whose lethal conditions earned them the name “Hell Ships,” and then of having to work in mines, steel mills, and elsewhere for Japanese companies. The POWs described being starved, beaten by company employees, and forced to do hard manual labor for companies including Nippon Steel Corporation, Mitsui Mining, and Mitsubishi Mining.<sup>120</sup>

Also discussed at this hearing was the Statement of Interest of the United States on Plaintiffs’ Motion to Remand filed by the Justice Department in the case of *Heimbuch vs. Ishihara Sangyo Kaisha* recently filed in the United States District Court for the Northern District of California. According to David Ogden, acting assistant attorney general for the Civil Division of the Department of Justice, the judge asked:

... whether federal law governs any claims by American soldiers captured and imprisoned by Japan during World War II. Where such claims are directed to private companies, private Japanese companies, for whom such soldiers were forced to work as slaves. And, whether removal of such claims from state court to federal court is proper.

Mr. Ogden stated that in its Statement of Interest the Department of Justice “... expressed the position that such suits were governed by federal law and should be heard in federal court.” Next, Ronald Bettauer, State Department deputy legal advisor, testified that the Multilateral Peace Treaty with Japan barred any suits by U.S. citizens against private Japanese companies. Mr. Bettauer also discussed the

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<sup>118</sup> (...continued)

Oct. 26, 2000, p. A22.

<sup>119</sup> On June 17, 2001, although stating that “... the 1951 treaty did deal with these claims.” Secretary of State Colin Powell said that he was going to look again at U.S. POWs claims for compensation for forced labor before his meeting with Japanese Foreign Minister Macaca Tenneco, *Agency France Press*, June 17, 2001 (online). Available through NEXIS Library: NEWS File: CURNWS.

<sup>120</sup> U.S. Congress, Senate, Judiciary Committee, *Former U.S. World War II POW's: A Struggle for Justice*, hearings, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 28, 2000, S.Hrg. 106-585, serial no. J-106-94.



legislative history of the Treaty and asserted that the Senate indeed meant to cut off the possibility of such suits when it agreed to the treaty.<sup>121</sup> Subsequently, complaints from POWs reportedly helped prompt S.Con.Res. 158 (above) that called for the Administration to facilitate discussions between POWs and Japanese companies on the issue of their claims.<sup>122</sup>

## Action in the 107<sup>th</sup> Congress

! H. R. 963 was introduced on March 8, 2001; it proposed a payment of \$4 per day plus interest for each day a survivor of the Bataan Death March was held by the Japanese. Referred to the House Armed Services Subcommittee on Military Personnel, and executive comment from the Department of Defense was requested. No further action was taken.

! H.R. 1198, introduced on March 22, 2001, and a similar bill, S. 1154, introduced June 29, 2001, would:

—Direct U.S. federal courts *not* to interpret Article 14(b) of the Treaty of Peace with Japan as a waiver of claims which would prevent U.S. POWs from pursuing forced labor suits against Japanese individuals or private corporations.

—Require that the applicable State statute of limitations apply to any such suit.

—Insure that article 26 of the Peace Treaty with Japan, which stated that if any war claims settlement by Japan with another country was more beneficial than the terms extended to the United States that those more beneficial terms would apply to the United States, should apply to forced labor suits by United States POWs.

—Provide that the Secretary of Veterans Affairs may secure directly from any department or agency of the United States government information relating to any chemical or biological tests conducted by Japan on members of the United States Armed Forces held as POWs in WWII and that such material should be provided to the individual concerned to the extent provided by law. Split referral of H.R. 1198 to House committees on International Relations, Judiciary, Government Reform. Referral of S. 1154 to Senate Judiciary Committee. Although a subcommittee hearing was held, no further action was taken.

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<sup>121</sup> Ibid.

<sup>122</sup> “Former POWs Blast Federal Opposition to Lawsuits Against Japanese Companies,” *Associated Press*, June 28, 2000 (online). Available through NEXIS Library: NEWS File: CURNWS.

- ! Both the House and Senate versions of H.R. 2500, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, had amendments which would have prohibited the use of any funds, appropriated by the Act for the Departments of Justice or State, from being used for filing a motion in any court opposing a civil action against any Japanese individual or corporation for compensation or reparations in which the plaintiff in the action alleges that as an American prisoner of war during WWII, he or she was used as slave or forced labor. The conference committee deleted this provision, stating that while “The conferees strongly agree that the extraordinary suffering and injury of our former prisoners of war deserve further recognition, and acknowledge the need for such additional consideration” they understood that “... the Administration strongly opposes this language, and is concerned that the inclusion of such language in the Act would be detrimental to the ongoing effort to enlist multilateral support for the campaign against terrorism.”<sup>123</sup>
- ! H.R. 2835, introduced September 5, 2001, as well as S. 1416 and S. 1419 have similar language which proposes paying \$20,000 to each veteran, civilian, or contractor employee who served in/with U.S. combat forces in WWII, was captured and held prisoner by Japan, and was required to perform slave labor by the Japanese government or a Japanese corporation. Split referral to House Ways and Means, Judiciary, and Veterans Affairs Committees. No further action was taken.
- ! S. 1272, introduced July 31, 2001, would assist veterans who were treated as slave laborers while being held by Japan during WWII by requiring federal courts trying actions brought by such persons which are pending in federal court or are removed to a federal court to apply the applicable statute of limitations of the state in which the action was brought. Referred to Senate Veterans Affairs Committee and discharged, then referred to Senate Judiciary Committee. No further action was taken.
- ! S. 1302, introduced August 2, 2001, would authorize payment of a gratuity of \$20,000 tax free to members of the Armed Forces and civilian employees of the United States or their surviving spouses for slave labor performed for Japan during World War II. Referred to Veterans Affairs Committee. No further action was taken.
- ! S. 1438, the National Defense Authorization Act for Fiscal Year 2002 which became PL 107-107. The Senate bill had a provision

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<sup>123</sup> U.S. Congress, House, *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, conference report to accompany H.R. 2500, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., H. Rept 107-278 (Washington: GPO, 2001), p. 171.

(Section 1064) authorizing payment of a \$20,000 gratuity to a veteran or civilian internee who served in or with the U.S. combat forces in WWII, was captured and held as a POW by Japan and was required to perform slave labor for Japan. The House bill, H.R. 2586, contained no similar provision. The conference committee dropped this provision.

## Efforts to Obtain More Compensation — Legal

Another approach is being pursued by a group of Allied military POWs and civilian internees who have filed several law suits seeking reparations from Japan in Japanese courts. To date, none of these suits has resulted in a victory for the claimants, with the Japanese courts citing the Article 14(b) peace treaty waiver as barring any further compensation to POWs by Japan.<sup>124</sup> According to a *Los Angeles Times* article, Japanese officials point to a 1993 study by the Japanese National Diet Library showing that Japan has paid out more than \$27 billion in war compensation to some 27 countries under the terms of the 1951 Treaty and state-to-state settlements.<sup>125</sup> (For further information, see also CRS Report 91-216, *Japan's WWII Reparations: A Factsheet*.) However, with regard to U.S. POWs and internees, in a recent federal district court filing, the Department of Justice reportedly said that after WWII the United States seized \$90 million in Japanese assets and that \$20 million of this money was used to pay for war claims of U.S. POWs and internees.<sup>126</sup> The German government, on the other hand, as of January 1, 1998, had paid some \$60 billion in WWII reparations, according to data reportedly from the Germany Ministry of Finance cited in a recent conference on Holocaust-Era Assets.<sup>127</sup> Germany recently acknowledged responsibility for its treatment of some U.S. civilian internees who were sent to recognized Nazi concentration camps. As noted above, the U.S. Treasury received \$18.5 million from Germany and reportedly distributed it to 235 eligible survivors.<sup>128</sup>

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<sup>124</sup> "Japanese Court Rejects WWII Lawsuits," *National Law Journal*, Dec. 14, 1998, p. A11.

<sup>125</sup> "Japan's War Victims in New Battle; Growing Movement Is Using Lawsuits, Legislation to Bring Attention to Crimes, But Tokyo Feels It has Done Its Part and Some Americans Fear Rekindling of Animosity," *Los Angeles Times*, Aug. 16, 1999, p. A1.

In declaring that it had already paid sufficient compensation, Japanese government spokesmen pointed to the \$27 billion in government-to-government payments that it had already made. This statement apparently referred to a 1993 report in Japanese, titled "Problems Arising From Post War Reparations: Overview," written by Takashi Tsukamoto of the National Diet Library.

<sup>126</sup> "U.S. Stance on Reparations by Japan Angers Ex-POWs," *Los Angeles Times*, June 28, 2000, part A, part 1, p. 3.

<sup>127</sup> *Washington Conference on Holocaust-Era Assets*, Nov. 30-Dec. 5, 1998, *Proceedings* (Washington: GPO, 1999). See p. 626 for figure of 102.1 billion Deutsche Marks (DM) paid in compensation through Jan. 1, 1998, with at least another DM24 billion in payments to come.

<sup>128</sup> These settlement efforts follow on the initial 1995 settlement for Hugo Princz and others.  
(continued...)

On July 6, 2000, the German parliament passed a law setting up a \$5-billion claim fund to pay Nazi-era slave and forced laborers, those experimented on, and some other Holocaust-related claims. At the same time, the parliament also passed a separate resolution apologizing to victims "... for that which Germans did to them, ... [in] taking away their rights, displacement, maltreatment and exploitation ..." The resolution also declared that "With the law, an historic moral duty is redeemed in the form of a long overdue humanitarian and financial gesture."<sup>129</sup>

Of our WWII Allies, Canada and, subsequently, the United Kingdom decided to pay their POWs compensation. Canada, having concluded that Japan will not pay compensation, has committed to paying each of some 700 still living veterans and surviving spouses of POWs \$24,000 Canadian (U.S. \$15,600) tax-free as compensation.<sup>130</sup> These Canadian payments have begun.<sup>131</sup>

In early November 2000, the British Ministry of Defense announced a one-time tax-free payment of £10,000 (\$15,000) for payment of what the defense minister called a "debt of honor" to each of the 16,700 individuals, including former members of the armed forces, the merchant navy, or civilians who were POWs of Japan; this figure included over 4,500 widows of POWs.<sup>132</sup>

In April 2001, the Australian and New Zealand governments announced plans for similar compensation. The Australian government plans payments of AUS\$25,000 (U.S. \$12,750) for each of 2,700 Australian survivors of Japanese POW camps. New Zealand is planning to compensate each of its 150 remaining survivors with a payment of NZ\$30,000 (about U.S.\$12,000).<sup>133</sup>

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<sup>128</sup> (...continued)

See U.S. Department of State, Office of the Legal Advisor, *The U.S.-Germany Nazi Persecution (Princz) Agreement*, handout, 1999?

See also "Germany Will Pay Victims of Nazis," *Washington Times*, June 22, 1999, p. A13.

For more detail, one can go to the Holocaust Museum Web site at [<http://www.ushmm.org/assets/frg.htm>].

Similar information is also available at the Department of Justice's Foreign Claims Settlement Commission Web site at [<http://www.usdoj.gov/fcsc/>].

<sup>129</sup> "Germany Passes Nazi Slave Fund," *Associated Press* wire story, July 6, 2000, [<http://www.stiftungsinitiative.de/eindex.html>].

<sup>130</sup> "Canada to Compensate Veterans Captured by Japan at Hong Kong," *Associated Press* wire story, Dec. 12, 1998 (online). Available through NEXIS Library: NEWS File: CURNWS.

<sup>131</sup> Canada, Receiver General, *Public Accounts of Canada, 1999* (Ottawa: Queen's Printer, 1999), vol. II, part II, "Additional Information and Analyses," pp. 10.20-10.27.

<sup>132</sup> A news report on this decision also stated that in June 2000 the Isle of Man decided to pay £10,000 to its POWs and mentioned that the Swiss government had given its soldiers who were POWs of the Japanese a payment of £2,000 each in 1955. "Pounds 10,000 Payout to Japan POWs; 'Debt of Honor' Repaid After 50-Year Struggle," *The Guardian* (London), Nov. 8, 2000, p. 12.

<sup>133</sup> "Australian, N.Z. POWs Held by Japan to Get Compensation," *Asian Political News*, (continued...)

## Attempts to Get Compensation — State

In July 1999, California became the first state to enact a law allowing claimants to file civil suits in state courts for compensation by any survivor of slave labor imposed by Nazi Germany or its allies; this California law also extended the time to file such suits until 2010. On April 12, 2000, two class action suits were filed by former U.S. and foreign POWs in California Superior Court in Orange County against Mitsui & Co., Nippon Steel U.S.A., Inc., Mitsubishi Co., and their subsidiaries alleging torture, beatings, and forced labor.<sup>134</sup> These suits, which are being appealed, were dismissed in late September 2000 with the judge citing the 1951 Treaty as settling all claims.<sup>135</sup> As of late April 2001, over 30 class action and individual suits had been filed in California courts.<sup>136</sup> Since passage of this California law, an additional 10 states are reportedly considering similar bills or resolutions dealing with damage claims and/or apologies from Japan.<sup>137</sup>

Recent court cases had contradictory results. On September 19, 2001, in dismissing seven suits brought by Chinese and Korean slave workers against Japanese companies, including Mitsubishi and Kajima, under this 1999 state law, U.S. District Judge Vaughn R. Walker called the state law unconstitutional because it “infringes on the federal government’s exclusive power over foreign affairs.”<sup>138</sup>

However, in late October 2001, a California State Superior Court judge rejected the positions of the Japanese companies involved and the U.S. State Department that the Treaty of Peace with Japan “Unambiguously precluded these suits,” when he ruled that three suits should go forward; they involved ex-POWs seeking compensation for being made slave laborers for Mitsubishi or Mitsui. In his ruling

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<sup>133</sup> (...continued)

Apr. 30, 2001 (online). Available through NEXIS Library: NEWS File: CURNWS.

<sup>134</sup> “Former U.S., Foreign POWs Sue Japan Firms for Forced Labor,” *Japan Policy and Politics*, Apr. 17, 2000 (online). Available through NEXIS Library: NEWS File: CURNWS.

“California Calls on Japan to Apologize for War Crimes,” *Japan Policy and Politics*, Aug. 30, 1999 (online). Available through NEXIS Library: NEWS File: CURNWS.

“Treaty Might Ban POW’s Suit Against Japanese Firms,” *Albuquerque Journal*, Sept. 16, 1999, p. B1.

“WWII Vets Revive Grievances With Japan; U.S. Ambassador Says Claims Over Forced Labor Not Valid Under Peace Treaty,” *Washington Post*, Jan. 19, 2000, p. A17.

<sup>135</sup> “POWs Who Sued Japanese Firms Likely to Appeal Ruling,” *San Diego Union-Tribune*, Sept. 23, 2000, p. A7.

<sup>136</sup> “State Is Ground Zero for WWII Lawsuits: California Lets Ex-POWs Take Aim at Japan,” *San Francisco Chronicle*, Apr. 22, 2001, p. A1.

<sup>137</sup> “U.S. Ex-POWs Intensify Compensation Campaign,” *Kyodo News Service, Japan Economic Newswire*, May 20, 2000 (online). Available through NEXIS Library: NEWS File: CURNWS.

<sup>138</sup> “Law Allowing Suits by Forced Laborers Voided; Court; A Judge Rules that the State Measure on WWII Redress Violates the Constitution,” *Los Angeles Times*, Sept. 20, 2001, part 2, p. 1.

Judge William F. McDonald said in part, “It is the courts, not the executive branch, that will ultimately determine the meaning or applicability of a treaty.”<sup>139</sup>

Recent developments which might influence the future course of suits against Japanese companies in Japan and perhaps in other countries include the following:

In July 2000 a suit was settled against the Nachi-Fujikoshi Corp. by elderly South Koreans who alleged that they were forced laborers in WWII. While the company did not give the Koreans the apology and acknowledgment of responsibility they were seeking, the company agreed to pay them 30 million yen in “settlement money.” One of the reasons cited for the company’s decision to settle was their knowledge that the plaintiffs were about to join a suit filed in the California courts.<sup>140</sup>

Four years ago a suit was filed in Japanese court by Chinese who claimed that during WWII they were taken to Japan and made to perform slave labor for the large multinational Japanese construction and mining corporation, Kajima. However, after 4 years of litigation in which Kajima denied any responsibility, in November 2000 the company, while still saying it admitted no responsibility, offered to pay compensation of \$4.6 million dollars to the few remaining survivors and the relatives of those who died. This is the first time a suit filed by Chinese slave laborers in the Japanese courts was successful.<sup>141</sup>

According to a *New York Times* article,<sup>142</sup> another development is the increasing willingness of Japanese courts to hear testimony about Japanese atrocities rather than dismissing the case at the beginning. The *New York Times* cites the ongoing testimony of Yoshio Shinozuka, a member of Unit 731, and other Unit 731 members

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<sup>139</sup> “Former POWs Win Legal Victory in California State Court; ‘The Court Looked at Our Cases and Told the Japanese Companies and the Administration That Their Excuses Won’t Work Anymore,’” *PR Newswire*, Oct. 25, 2001 (online). Available through NEXIS Library: NEWS File: CURNWS.

<sup>140</sup> “Forced Labor Settlement Set Precedent Fujikoshi, Plaintiffs Agrees on 30 Mil. Yen At Supreme Court,” *The Daily Yomiuri* (Tokyo), July 19, 2000. p. 3.

<sup>141</sup> “Fund for Wartime Slaves Set Up in Japan,” *New York Times*, Nov. 30, 2000, p. A14.

<sup>142</sup> “Japanese Veteran Testifies in War Atrocity Suit,” *New York Times*, Dec. 21, 2000, p. A3.

In addition, two recently released scholarly books continue the reevaluation of Japan’s alleged WWII atrocities and relations between the United States and Japan immediately after the war that could have an impact on the issue of compensation for U.S. POWs. The first work, a very heavily researched book by Herbert P. Bix, *Hirohito and the Making of Modern Japan* (New York: Harper Collins, 2000), alleges that Emperor Hirohito was a full and active participant in the planning and prosecution of the war.

The other book, by John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. Norton, 1999), alleges that U.S. occupation authorities deliberately portrayed the Emperor as having little or no power or responsibility for WWII, so that they did not have to try him as a war criminal. This way, he says, they could use the Emperor as a powerful pacifying and unifying force to make the occupation more acceptable to the Japanese. This book also touches on occupation authorities’ dealings with Unit 731 personnel.

in a court case brought by Chinese victims of Unit 731 in Tokyo district court. This is apparently the first time Unit 731 members have been allowed to testify about Unit 731's alleged war crimes in a Japanese court. According to news accounts, on August 27, 2002, the Japanese district court acknowledged for the first time that Japan had developed and used biological weapons in China both before and during WWII. A *Christian Science Monitor* article<sup>143</sup> stated that it was only 10 years ago that the Japanese government acknowledged the existence of Unit 731 and that it still refuses to comment on Unit 731's activities. Presiding Judge Koji Iwata of the Tokyo district court stated, "The evidence shows that Japanese troops, including Unit 731 and others, used bacteriological weapons on the orders of the Imperial Army's headquarters, and that many local residents died." Having said that, however, Judge Iwata dismissed the claims by 180 Chinese plaintiffs in the five-year long case, stating that "no international law that enabled individuals to sue for war damages had been established at the time or has been now." The plaintiffs were seeking an apology and \$83,000 each in damages for the suffering caused by Unit 731.<sup>144</sup>

Other developments noted in the *New York Times* article were the agreement by Mitsubishi Heavy Industries to meet with 50 plaintiffs in two slave labor suits brought by WWII captive foreign workers who allege they were used as slave laborers by Mitsubishi and the recent war tribunal convened in Tokyo by various advocacy groups which highlighted the role of Japan's wartime leaders, including Emperor Hirohito, in the sexual slavery of the "comfort women."<sup>145</sup>

On April 26, 2002, in the first acknowledgment by a Japanese court of the responsibility of Japanese firms for liability for wartime forced labor, the Fukuoka District Court ordered Mitsui Mining Co. to pay 165 million yen to compensate 15 Chinese men who had been forced to work at Mitsui coal mines in Fukuoka prefecture during WWII.<sup>146</sup>

## The Stikker-Yoshida Letter

On September 4, 2001, an op-ed article appeared in the *New York Times* entitled *Recovering Japan's Wartime Past—and Ours*, by Steven C. Clemmons, executive vice president of the New America Foundation. In discussing the issue of reparations

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<sup>143</sup> "Belatedly, Japan Admits Use of Germ Warfare," *Christian Science Monitor*, August 28, 2002, p. 7.

<sup>144</sup> "Tokyo Court Confirms Japan Used Germ Warfare in China," *Washington Post*, August 28, 2002, p. A15.

<sup>145</sup> "Asian Sex Slaves Hope New Law Will Aid in Fight for Redress," *San Francisco Chronicle*, July 1, 2001, p. A8. The Justice Department asserted, in a suit brought in U.S. courts by "comfort women," the U.S. government's position that Japan, as a foreign nation, has immunity to such suits in U.S. courts and that relief for the plaintiffs would have serious repercussions for U.S. foreign policy toward Japan.

<sup>146</sup> "Court Awards 165 Mil. Yen to Chinese Forced Laborers," *Kyodo News Service, Japan Economic Newswire*, Apr. 26, 2002 (online). Available through NEXIS Library: NEWS File: CURNWS.

by Japan, the 1951 Treaty, and John Foster Dulles's efforts as chief of U.S. negotiations, the author referred to correspondence between Japanese Prime Minister Shigeru Yoshida and Dirk Stikker, The Netherlands Minister of Foreign Affairs, which was only declassified in April 2000. According to Clemmons, Dulles was having a hard time persuading the Dutch to sign the 1951 Treaty because they were reluctant to waive the rights of their citizens to sue Japan. The letter from Yoshida contained the following sentence: "... the Government of Japan does not consider that the Government of the Netherlands by signing the Treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the Treaty comes into force these claims would be non-existent."<sup>147</sup> However, the next paragraph of the letter that Clemmons cites, which was not quoted in the New York Times op-ed, states:

However, the Japanese government points out that, under the Treaty, Allied nationals will not be able to obtain satisfaction regarding such claims, although, as the Netherlands government suggests, there are certain types of private claims by Allied nationals which the Japanese government might wish voluntarily to deal with.

The Clemmons article goes on to refer to language in the Treaty which states, "... should Japan make a peace settlement or war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty."

According to Clemmons, the Dutch pursued a claim against Japan on behalf of private citizens, which netted them \$10 million. Also mentioned were a Japanese settlement with Burma "... that provided reparations, services and investments amounting, over 10 years, to \$250 million," and an agreement with Switzerland that provided "... compensation for maltreatment, personal injury and loss arising from acts illegal under the rules of war."<sup>148</sup> Clemmons also argued that "... the Stikker-Yoshida letters, and the Burmese and Swiss agreements could all be used to make Japan, under article 26 of the San Francisco Treaty, offer similar terms to the treaty's 47 signatories."<sup>149</sup>

When Lester Tenny, a former POW, sued Mitsui Corp for compensation for his slave labor in federal court in California in 2000, a Department of Justice official

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<sup>147</sup> Stikker to Yoshida, Sept. 7, 1951. National Archives and Records Administration, Record Group 59, *General Records of the Department of State, Central Decimal File 1955-1959, 294.1141/9-459 through 294.5641/4-1955*.

<sup>148</sup> See also the text of a confidential 1955 interoffice memorandum discussing the "Stikker-Yoshida arrangements," from a Mr. Fraleigh at the American Embassy in Tokyo, saying "... that it would be a little awkward to explain to American civilians who were interned by the Japanese in the Far East why they should receive no compensation if the Dutch government succeeds in getting some compensation from Japan for Dutch civilian internees." "You will recall we had a lot of explaining to do to American prisoners of war about their being cut out of the Article 16 fund." This document is discussed in Holmes, *Unjust Enrichment*, on p. 139, and reproduced on p. 180.

<sup>149</sup> "Recovering Japan's Wartime Past—and Ours," op-ed., *New York Times*, Sept. 4, 2001, p. A27.



testified in court that it was the government's position that the 1951 Treaty cut off his right to sue, and his suit was dismissed. According to a recent newspaper account, when Mr. Tenny's lawyer told a State Department official of the documents found by Mr. Clemmons, the State Department official said that these documents had already been considered and would not change the State Department's interpretation of the Treaty.<sup>150</sup>

## Dwindling Numbers of POWS and Internees

Differing calculations have been given for the number of POWs and internees held by Germany and Japan, and differing numbers have been estimated for the number of surviving POWs and internees today as noted in the preceding pages. It is evident, however, that the number of POWs and internees who might be eligible for compensation is small and rapidly dwindling.

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<sup>150</sup> "Ex-POWs Demand Their V-J Day; 4 Former GIS Seek to Sue Japanese for Slave Labor," *Chicago Tribune*, Sept. 8, 2001, p. 8.

"Suit Seeks \$1 Trillion from Japan for War; Bataan Survivor, Army Nurse Seek Class Action Status," *Chicago Tribune*, Sept. 6, 2001, p. 10. A class action suit, based on these newly uncovered documents, asking for payment of \$1 trillion in reparations from Japan has reportedly been filed in federal court in Chicago.

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