

4. Charges of Defendant H (facts constituting an offense)

Defendant H:

- 1) was the head of the Empire of Japan, exercised the prerogatives as a sovereign (Article 4 of the Constitution of the Empire of Japan), had the supreme command of the Army and Navy (Article 11), and was in a position of the commander-in-chief of the Japanese military since his coronation in 1926 until Japan's defeat in August 1945;
- 2) led the war and war strategies based on the information supplied to him by the military and on his own strategic judgments since around 1931 when the so-called Fifteen-Year War began;
- 3) particularly upon the February 26 Incident of 1936, occurred in the year after the "Clarification of the Japanese Body Politic Movement" (the so-called The-Emperor-as-an-Organ Theory Incident) of 1935, encouraged and urged the hesitant Army leadership to suppress the Incident, thereby enhancing his authority as the supreme commander;
- 4) involved himself actively as the supreme commander in the development of the all-out war against China (the Marco Polo Bridge Incident in 1937, the expansion of war zones into Shanghai in the same year, the establishment of the Imperial Military Headquarters in November of the same year, the occupation of Nanking in December) and in the process of the war against the United States and the United Kingdom after December 8, 1941, and he was in a position to order the Navy and Army' High Commands and the Imperial Military Headquarters to make sure that these commanding organs issue the Japanese Military strategic orders that would abide by international law.

1. Liability for the Rape of Nanking

[Facts and Applicable Laws]

During the period from December 1937 to around February 1938, in the City of Nanking, serving as the commander-in-chief of the Japanese Army in the war against China, Defendant H neglected his duty as the commander-in-chief who should control the behavior of the rank and file of the troops, letting the soldiers who fought the Battle of Nanking, which he commanded, rape the civilian Chinese women on a mass-scale and during a long period, repeatedly and incessantly, killed many of these women after

raping them, and those women who barely survived the killings to still have wounds on their sexual organs, and scars on other parts of the body from attempting to resist the rape, and PTSD that is left incurable to this day, besides letting the Japanese soldiers massacre tens of thousands of civilian Chinese people, and commit serious crimes such as setting these Chinese civilians' residences and properties on fire and ruthlessly looting them. Therefore, Defendant H violated the laws of war and international humanitarian law.

[Prosecutor's Allegation]

The Nanking Atrocities that included the raping of a vast number of civilian Chinese women described above covered a large area and lasted for a long period of time, were committed repeatedly and relentlessly, and were indeed a series of seriously criminal behaviors which appalled the world. Therefore, if Defendant H made any kind of effort to meet his responsibility as the commander-in-chief, then he must have been able to be informed of these behaviors either through briefing by his military staffs or members of the imperial family, news reports, or by accounts from the Imperial headquarters which were informed by European or American journalists' reports of the Rape of Nanking to the world media sources. Defendant H neglected his responsibility even though he had the duty to control the soldiers who participated in the Battle of Nanking in the troops he was commanding, and to prevent them from violating the laws of war by committing such crimes as rape of civilian women in a large area for a long period of time, repeatedly and consecutively, massacre of tens of thousands of civilian Chinese people, and setting these Chinese civilians' residences and properties on fire, ruthlessly looting them. Therefore, his neglect of such a duty is against international law, according to the "principle of commander's responsibility" established after the "Yamashita Case" in the Manila Military Tribunal of the United States Military Commission.

2. Liability for cases of "comfort stations" or rape center set-ups

[Facts and Applicable Laws]

During Japan's war against China and against the Allied Powers, the Commander-in-Chief of Japan (H) neglected his duty to control the behaviors and operations of rank and file of troops, enabling the making of a vast number of women from Korea, Taiwan,

China, the Philippines and Indonesia into sex slaves for Japanese officers and soldiers, putting these women in the "comfort stations" that were set up over extremely vast areas that are shown in the attached table and map (the so-called "comfort stations" map) in the Asia-Pacific region during the period from at the latest around 1932 during the First Shanghai Incident to Japan's defeat in August 1945 (in Taiwan, till the end of that year). Therefore, Defendant H violated international humanitarian law.

committed crimes of humanity

[Prosecutor's Allegation]

The so-called "comfort stations" were first set up in order to prevent the anti-Japanese sentiments in China from aggravating further because of the Japanese soldiers' rampant raping of Chinese women at the time of the First Shanghai Incident in 1932 and then grew into full-scale upon all-out invasion into China in 1937. And given the large scale of expansion of battle zones of this war of aggression, and its areal vastness and systematic nature manifested in the fact that "comfort stations" were set up even in the very forefront battle lines in the Asia-Pacific region, it would have been impossible for the military leadership to fail to notice the existence of the "comfort stations." In fact, Defendant H's second younger brother Prince Takamatsunomiya noted of "comfort women" in his diary. The Defendant himself spoke of deterioration of military disciplines in the face of the prolongation of war, and problems with keeping the public peace and order. Therefore, we can assume his knowledge of "facilities for sexual comfort" that were the main theme of the measures taken against these problems. Given the above-stated vastness and speed of expansion of battle zones in the war of aggression, and also considering how to set up "comfort stations" at every single depot (supply stations) of the very forefront battlelines in the whole Asia-Pacific region up until the end of the war in 1945, it would have been easy for Defendant H to understand that women had to be recruited by force, coercion, threat, deception and/or allurement, and that the collected women would be forced to have sexual intercourse with a large number of soldiers day after day, and that the women would be forced to be transported along with the troops and military supplies whenever the battlelines moved around, and that in other words, the actual situation of "comfort stations" would be nothing but a sexual slavery system that was against the international humanitarian law, if Defendant H made any kind of effort to meet his responsibility as the supreme commander. However, it was either that Defendant H neglected his duty to learn about the actual

situation of "comfort stations" that was nothing but sexual slavery which violated international humanitarian law, or that Defendant H had realized that the "comfort stations" would be a sexual slavery system in and of itself which was against international humanitarian law, but thought he had no choice other than setting up the comfort stations in order to prevent the already-strong anti-Japanese sentiments from aggravating further, to protect soldiers' physical fighting capacity against venereal diseases, to boost soldiers' morale by securing outlets for their stress and repression, to prevent vital information from leaking through soldiers' and officers' personal/private interaction with local women of enemy countries. In either case, he neglected his duty to stop the Army or the civilian brokers from recruiting the women by force, coercion, threat, deception and/or allurement, letting a vast number of these women be made into "comfort women," i.e., into sexual slaves in the whole region of Asia-Pacific until Japan's defeat in 1945, and upon the end of the war, although he was responsible for these women's return to their homes, he abandoned them.

Given his spiritual positioning that equaled to that of "a god" vis-a-vis Japanese soldiers, had he decided to abolish the "comfort stations," it would have been possible to eradicate the sexual slavery system. And given the depth and magnitude of the human rights violation which the victimized women experienced, and the grave consequences thereof, Defendant H's neglect of his duty to stop the Army to recruit the women by force, coercion, threat, deception and/or allurement holds significant illegality in reference to international law.

Table: "List of Comfort Stations" (Contents omitted here)

China

Taiwan

The Philippines

Indonesia

Malaysia

Burma

Vietnam

Indian Andaman Islands, Nikobal Islands

Papua New Guinea (Rabaul, Kabiien) and other islands in the Pacific
Saipan, Truk, Palau in the South Pacific and American Guam
Okinawa
Japan

Figure (the so-called "comfort station" map) omitted