

**War Crimes and Human Right Violations of Imperial Japan
Army in the Second Sino-Japanese War between
1937 and 1945**

A Term Paper

By

Arda Deniz Aksular

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War Crimes and Human Right Violations of Imperial Japan Army in the Second Sino-Japanese War between 1937 and 1945

1. Introduction

The Japan and China are great powers of today's world. A brief understanding of their history can provide clues about major humanitarian and human rights development. For most of the people, these two powers seem awfully similar to the other. However, they had strong struggles in their history and in the twentieth century, they experienced the greatest war in the Asia. This conflict was significant since it became the source of many troubles today. In today's China, memory of the Sino-Japanese war is a front page issue, a means of diplomatic relations between Beijing and Tokyo (Coble, 2007). In addition, this conflict can be considered as a part of the Second World War. Most components of the human rights law started to develop by the end of the Second World War. During the war, the Imperial Japan Army violated human rights in spite of several sources of international law. The main motivation of these violations was creating superiority against West in the way of an imperial Asian empire. At end of the war, the Japan was defeated. However, the staff who was responsible of systematic war crimes gained amnesty by the West in exchange of the valuable data. Therefore, both Japanese and Western powers behaved for the account of their political desires and they both disobeyed the international law that was created by them. This paper claims that the international law cannot be considered as an abstract structure. It is affected by the politics of nations, power relations and social tendencies of the societies. Thus, a functional law system has to consider these variables in order to survive for the long periods.

2. Background of the War

The Second Sino-Japanese War (or simply Japanese-Chinese War) was a military conflict fought between the Republic of China and the Empire of Japan between 1937 and 1945. Japans use different names for this war since they consider the war as liberating their zones from the western imperial domination. On the other hand, Chinese people name this war as the "War of Resistance" because of their success which was built on their guerilla warfare.

The Second Sino-Japanese War was the result of a decades-long Japanese imperialist policy aiming to dominate China politically and militarily to secure its vast raw material reserves and other resources.¹

Actually, Japan was a traditional and introverted country in the middle of nineteenth century. The inevitable contact with the western powers, the administrative reform of 1889 "*Japon Tanzimati*" and King Meiji's Restoration process provided a rapid modernization in the Japan islands. However, the industrialization and modernization led the emergence of the idea of colonization as well (Okur, 2009). On the other hand, Walden argues that the Japan is a country of contradictions. It dominates her relations with the outer world and bewilders her friends and enemies alike. The Japan's modern history is full of such cases. It needs industrial expansion and is destroying its most important market in this war (Walden, 1938).

In the similar period of Japanese modernization, the Chinese emperor was also in a dilemma: China and the British imperial power had long struggles for the commerce of opium. After the success of British power, China also tried a similar restoration process in the country. However, by the risk of emerging rivals in the society, the Chinese emperor sold the modern industrial plants to the western powers. In contrast, the Japanese emperor had sold these industries to the loyal families of Samurais. By this way, today's companies such as Mitsubishi, Kawasaki emerged. These families became a shield near the Japan Empire. On the other hand, China was in process of nation state building and these tendencies were formed by the conflicts against the western colonial powers (Okur, 2009). After First World War, Chinese emperor Chiang-Kay-Shek could unite the society near the ideas of nationalism and he could achieve a stable power. Consequently, the rising tide of Chinese nationalism and notions of self determination stoked the coals of war as well.² In the beginning of the 20th century, a new and increasingly militant anti-imperialist nationalism was developing among young Chinese intellectuals, merchants and soldiers (Catchpole, Simon, Edward, 2001). In this respect, the causes of this war were different from the contemporary conflicts (the conflicts of post modern globalization era). These causes were built on the outputs of national modernization processes. They were primarily Japanese imperialism and secondly Chinese nationalism.

¹ Cited from the http://wapedia.mobi/en/Second_Sino-Japanese_War

² Cited from the http://en.wikipedia.org/wiki/Second_Sino-Japanese_War

Before 1937, China and Japan fought in small, localized engagements. Yet the two sides, for a variety of reasons, refrained from fighting a total war. By the footsteps of Second World War, the imperial ideas of Japan became uncontrollable. Japanese natural expansion zone was in Korea and China and as a result, Japan prepared itself to a total war in Eastern Asia.

3. War Crimes and Human Right Violations

3.1 Legal Frame: International Law

Before the Second Sino Japanese War, several sources of international law were binding the Japan. Article 23 of the Hague Conventions, Article 5 of the Treaty in Relation to the Use of Submarines and Noxious Gases in Warfare, Article 171 of the Versailles Peace Treaty and a resolution adopted by the League of Nations in 1938 was condemning the use of poison gas by the Empire of Japan. Besides, Chapter Two of Hague Conventions was providing important protection for the prisoners of the war. The Japanese government also signed the Kellogg-Briand Pact, thereby rendering its crimes against peace.

3.1.1 The Hague Conventions

The Hague Conventions were international treaties negotiated at the First and Second Peace Conferences at The Hague, Netherlands in 1899 and 1907. The main effect of the first Convention was to ban the use of certain types of modern technology in war: bombing from the air, chemical warfare, and hollow point bullets. The Convention also set up the Permanent Court of Arbitration. The Second Peace Conference was held in 1907 and it modified some parts of the first one with an increased focus on naval warfare.

The Chapter 2 of Hague Convention which was titled as “The prisoners of the war” provided some rights to the prisoners and it also gave many responsibilities to hostile states. These rules were generally embedding the humanly behavior against to prisoners. This chapter included 20 articles and it also gave some responsibilities to the prisoners such as declaring his/her name and rank truly as a prisoner. In this chapter, there were articles such as “The prisoners must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain as their property” (Article 4). Officers taken from prisoners shall

receive the same rate of pay as of officers of corresponding rank in the country where they are detained...” (Article 17)³ Such articles were not so realistic in the conditions of a conflict.

3.1.2 Geneva Protocol

Though not negotiated in The Hague, the Geneva Protocol is considered as an addition to the Convention. Signed in 1925 and entered force in 1928, it permanently bans the use of all forms of chemical and biological warfare in its single section. The protocol grew out as a result of public reaction against chemical warfare following the use of mustard gas and similar agents in World War I.⁴

3.1.3 Washington Treaty in Relation to the Use of Submarines and Noxious Gases in Warfare

This treaty was signed in 1922 and it mainly states that “the USA, the British Empire, France, Italy and Japan are desiring to make more effective rules to prevent the use in war of noxious gases and chemicals...”

Article 5 states that “The use in war of poisonous or other gases, and all analogous liquids, materials or devices, having been justly condemned by the general opinion of the civilized world...” “...and this prohibition shall be universally accepted as a part of international law...”⁵ Briefly, the signatory powers declare that they obey these kinds of rules for the protection of the lives of neutrals and noncombatants at sea in time of war.

3.1.4 Versailles Peace Treaty

The Versailles Peace Treaty is one of the peace treaties that finished the First World War. It was signed on 28 June 1919 and it ended the war between Allied forces and Germany. Actually it drew up the rules in countries in European, especially the losers, Germany. By this treaty, Germany was considered as the sole responsible of the war and other Alliance Forces were dealt with different treaties. In Versailles Peace Treaty, Article 171 was forbidding the

³ The full text of Hague Convention can be found on <http://www.icrc.org/IHL.NSF/FULL/195?OpenDocument>

⁴ The full text of the Geneva Protocol can be found on <http://www.un.org/disarmament/WMD/Bio/1925GenevaProtocol.shtml>

⁵ Full text of the treaty can be found on: http://wwi.lib.byu.edu/index.php/Washington_Treaty_in_Relation_to_the_Use_of_Submarines_and_Noxious_Gases_in_Warfare

manufacture and import of gases in Germany. However, The League of Nations adopted a resolution in 1938 and it made this article binding for all member states.⁶

3.1.5 Kellogg-Briand Pact

The Kellogg-Briand Pact (also named as the Pact of Paris) was a multinational treaty that prohibited the use of war as “an instrument of national policy.” In its original form, the Pact of Paris was a pact to prevent any conflict between only France and the United States of America. However, Frank Kellogg, then U.S. Secretary of State, built a proposal for a multilateral pact against war open for all nations to become signatories. Like many countries, The Kellogg-Briand Pact was signed by the Japan in 1928. The Pact was concluded outside the League of Nations, and remains as a binding treaty under international law.⁷

The Pact did not live up to its aim of ending war, and in this sense it made no immediate contribution to international peace and proved to be ineffective in the years that the Japanese invasion of Manchuria in 1931, the Italian invasion of Abyssinia in 1935, and the German / Soviet Union invasion of Poland in 1939.⁸ However, the pact is an important multilateral treaty since it is the legal bases establishing the international norms.

3.1.6 League of Nations

The League of Nations (LoN) was an inter-governmental organization founded as a result of the Treaty of Versailles in 1919–1920. The League’s goals included upholding the new found Rights of Man such as right of non whites, rights of women, rights of soldiers, disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global quality of life. In its greatest extents it included 58 countries.⁹ The League lacked its own armed force and so depended on the Great Powers to enforce its resolutions, keep to economic sanctions which the League ordered, or provide an army, when needed, for the League to use. However, these powers were often reluctant to do so. When, during the Second Italian-Abyssinian War, the League accused Benito Mussolini's soldiers of targeting Red Cross medical tents, Mussolini responded that

⁶ Full text of the treaty can be found on <http://net.lib.byu.edu/~rdh7/wwi/versailles.html>

⁷ Full text of the Pact can be found on <http://www.yale.edu/lawweb/avalon/imt/kbpact.htm>

⁸ http://en.wikipedia.org/wiki/Kellogg%E2%80%93Briand_Pact

⁹ See Appendix A for the members of LoN.

“Ethiopians were not fully human, therefore the human rights laws was not applied”. Benito Mussolini stated that “The League is very well when sparrows shout, but not good at all when eagles fall out.” After a number of notable successes and some early failures in the 1920s, the League ultimately proved incapable of preventing aggression by the Axis powers in the 1930s. Hitler claimed these clauses violated Germany’s sovereignty. Germany withdrew from the League soon to be followed by many other totalitarian and militaristic nations. Both Japan and China were the founding members of League of Nations. However, the onset of World War II showed that the League had failed its primary purpose, which was to avoid any future world war. Several countries started to withdraw from League of Nations. Both German and Japanese attacks made League of Nations more useless. Finally, the US withdrew from this organization and it was the end of the League of Nations.¹⁰ On the other hand, with a human rights discourse, this organization was also a guarantee of western colonial system and mandates. That is the why Turkey did not become a member before the end of its desires on Mosul.

Therefore, there were some basic sources of human rights as well as an international organization before the Second Sino-Japanese war. All of these sources of law were binding for the Japan. However, Japan did not consider any of them.

3.2 Starting of the War

In 1931, Japanese forces invaded northeastern provinces (Manchuria) of China. After this invasion, Japan was criticized by the League of Nations and quit this body in protest (Catchpole, Simon, Edward, 2001). This was followed by the “Mukden Incident”. The last of these incidents was the Marco Polo Bridge Incident of 1937, marking the beginning of full scale war between the two countries (Williamsen, 1998).

The Second Sino-Japanese War was not only included the two states but a bunch of world powers. In the beginning Nazi Germany wanted to see Japans as their allies. Subsequently, Britain, France and the USSR incited Japan to attack China. Especially, Stalin supported Japan because of that he had known the desires of Japan in the Siberia and Manchuria. Briefly, it

¹⁰ http://en.wikipedia.org/wiki/League_of_Nations

can be argued that the West sacrificed China easily to keep itself from closing Nazi threat (Okur, 2009)

According to some writers the China was nearly “forty” years underdeveloped when compared to Japan. Besides, Chinese nationalist government was in a strong conflict with the communists. (Catchpole, Simon, Edward, 2001). Therefore, China lost rapidly. Western powers were also benefited from these loses by invading some provinces of China. Some historians claims that the Britain strongly incited Japan for such an invasion to be a guardian of China as well (Okur, 2009). In the similar process, Japan also fought with Russia for its East Asian imperial desires. The Russo-Japanese war had been actuated by fear. There had been a fear of conflict with Russia with Russia into the future, which had made it necessary to secure a favorable a strategic position in China, particularly due to the Trans-Siberian Railway (Walden, 1938). The First World War finished in the advantages of Japan, but Japan’s imperial desired have not been finished. The Japans saw themselves as the leader of Asia and they were the power to keep Asian society from the western colonial domination. This is theorized as “The doctrine of Pan Asia” or “Japanese-sponsored Greater East Asian Co-Prosperity Sphere”. In this respect, Japanese exploited the anti-European feeling among the nationalist groups in the some of the East Asian countries such as Burma (Catchpole, Simon, Edward, 2001). Japans always believed that they were fighting for the freedom of Asia. For this aim, the right of governance of China, Korea and even endless Siberia must be in the hands of Japan. As we see in this example, the nations can legitimize any human rights violations and intervention by creating such kinds of myths.

3.3 Japanese Human Rights Violations & War Crimes

In 1935, Japan declared that it cancelled all treaties in the seas. Thus, if there are political targets there is not much meaning of international law for these states. After the Japan armies invaded China’s Northern provinces, it bombed and invaded Nanjing. Although poorly trained and equipped, the Chinese army and communist irregulars put up strong resistance. This Chinese resistance was only a resistance of guerilla. Japan considered all things legitimate to break the power of Chinese resistance. Chinese were regarded as “sub-human”. The Japanese troops responded to Chinese resistance to their invasion by

embarking on an orgy of murder, rape, and looting .¹¹ Sexual violence and rape against women became a military strategy for the Imperial Japan Army. They are considered as normal for the “needs” of Japan soldiers. Up to 300.000 Chinese were mass murdered in the Nanjing Massacre after the fall of Nanjing in 1937. The Japans behaved extremely wildly. If there was no need for an inquiry they were just killing the Chinese people.¹²

Unit 731, a covert biological and chemical warfare research and development unit of the Imperial Japanese Army was established. It undertook lethal human experimentation. It was a result of need for superiority against West.

In 1940, the Imperial Japanese Army Air Service bombed Ningbo with fleas carrying the bubonic plague. During the Khabarovsk War Crime Trials, Major General Kiyashi Kawashima accepted that some 40 members of Unit 731 were the responsible of these bombings.

Several experiments were held by the unit: Vivisection, weapon testing and germ warfare attacks. These operations caused epidemic plague outbreaks. Japan thought that the chemical weapons were survival for the future of Japan. Immediately the army built the units to start the tests. The labs were constructed in the invaded areas to keep them from the eyes and to say “there is no work in Japan borders” (Nelson, Maday, Dietrich-Segarra, Beth, 1998). Today, this policy is similar that the countries are using “black zones” and outer areas such as Guantanamo to torture to prisoners. Furthermore, that is why the US has not ratified and the International Criminal Court (ICC) as a tribunal that provides extra territorial protection.¹³

According to some historians, the chemical weapons were authorized by specific orders given by Japan emperor Hirohito himself, transmitted by the chief of staff of the army. For example, the Emperor authorized the use of toxic gas on 375 separate occasions during the battle of Wuhan from August to October, 1938. Because of fear of retaliation, those weapons were never used against Westerners but against other Asians judged “inferior” by

¹¹ http://www.nanking-massacre.com/RAPE_OF_NANKING_OR_NANJING_MASSACRE_1937.html

¹² <http://www.princeton.edu/~nanking/html/main.html>

¹³ See the Appendix B for the member countries of ICC.

the imperial propaganda. Bacteriological weapons provided by Japan units were also profusely used.¹⁴

3.4 End of the War: Defeat of Japan and Casualties

The war was a great tragedy. It included nearly 10 millions of soldiers from both sides. The Japan casualties were near 2.1 million while the Chinese side lost 3.2 millions of soldiers. However, the real panorama was in the reality of Chinese civil losses. Nearly, 17.530.000 civil people were wounded, lost or died in these conflicts. Besides, the war became one of the mighty examples of the war crimes. Historians estimate up to 300.000 Chinese were mass murdered in the Nanjing Massacre after the fall of Nanjing in 1937.

After the starting of Japanese invasion, USSR started to support China by the emergence of a secret contract between Hitler and Japan. Also, Japan's expansion on Pacific had been measured by the US and the petroleum sales were cancelled. By the time, Japan considered the US as the primary threat for a Pacific Japan Empire. Subsequently, Japan organized a sudden attack to Pearl Harbor in 1941, the war merged into the greater conflict of World War II. The US and the UK started to support China against Japanese invasion forces. The Second Sino-Japanese war was finished by the surrender of Japan in 1945 after the usage of two atomic bombs by the US. Soviet forces entered the war in 1945, two days after the US dropped the bomb on Hiroshima (Coble, 2007). Actually, Japanese accounts were wrong by the beginning. The Japan Empire was modernized when compared to China but, they underestimated the geographical deepness of the China. Besides, while China was 450 million in terms of population in the beginning of the war, the Japan was only 105 millions.¹⁵ This population showed that the component of human was still so important in the wars. But also, this was the main determiner of the civil losses. On the other hand, by the success of the communist irregulars, Mao Zedong gained political power. The conclusion of the war could not bring the peace to China but civil war continued until the communist victory. The People's Republic of China was established with a new communist regime in 1949 (Coble, 2007). According to some writers this was the unique result of this war. Steven Levine argues

¹⁴ http://en.wikipedia.org/wiki/Japanese_war_crimes

¹⁵ <http://www.worldwar2database.com/html/sinojapan.htm>

“If not for the Sino-Japanese War, it is doubtful whether the Chinese Communist party would ever have come to power.” (Philips, 2000)

3.5 Impunity of “Valuable Crime”

After Imperial Japan was surrendered by the Allies in 1945, The International Military Tribunals (known as Tokyo Trials) were held. The Japanese assault on the city of Nanjing was one of many incidents that the International Military Tribunal for the Far East (IMTFE, 1946-48) examined in the course of judging the wartime leaders of Japan. It was referred as the “Rape of Nanjing” (Brook, 2001). During the war, Asian and Western women were dragooned by the Japanese military into serving as sex slaves for Japanese troops. This issue was strongly emphasized in the trials and finally it could become an element of international collective memory. However, there were not any mentions of massacres or other war crimes of Japan (Jeans, 2005). In contrast, Douglas MacArthur, The Supreme Commander of the Allied Powers, secretly granted immunity to the physicians of Unit 731 in exchange for providing America with their research on biological warfare. Also, Khabarovsk War Crime Trials were held in the Soviet Union’s industrial city of Khabarovsk in 1949. Here, twelve members of the Japanese Army were accused as war criminals for manufacturing and using biological weapons during World War II. All these members were found guilty, and sentenced to terms ranging between two and twenty-five years in a labor camp. All were returned to Japan in 1956 after they provided all of the data and notes of Unit 731. Therefore, most of the people were granted amnesty by the US and the USSR in exchange for access to the data collected by them.¹⁶ This time, the amnesty came from the “quality” of crime but not from the degree of violence. Such crime was realized as “valuable” for the West. The case of Unit 731 has been considered as a “sensitive matter” in both Western and Japanese history (Jeans, 2005). Doubtlessly, the amnesty and impunity were political decisions that damaged to international law.

In Mao’s era, public memory of the Sino-Japanese conflict virtually disappeared. Nevertheless, it is popular due to the end of Cultural Revolution in 1980s (Coble, 2007). In the last several decades “The Rape of Nanjing” became a controversial marker of Chinese identity (Brook, 2001). Both nations have never had a military conflict since 1945, however,

¹⁶ http://wopedia.mobi/en/Khabarovsk_War_Crime_Trials

the Japanese war crimes and human rights violations remain unpunished. The governments know that this was a “peace without justice” and that is why the issue may come out as an oppressed memory of the China.

3.6 Evolution of International Law

The end of Second World War became a revival for the international humanitarian law. There are responses for such kinds of human right violations in the human rights law today. Most of these developments started to emerge as an output of the peace attempts at the end of the Second World War.

3.6.1 United Nations

The League of Nations had been terminated by the Second World War. However, by the catastrophe of the Second World War, the demand for a new supranational body reemerged. This process led to the birth of United Nations. In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom and the United States. The Charter was signed in 1945 by the representatives of the 50 countries.¹⁷ Today, the General Assembly is made up of 192 member states.

From 1945 to 1970 The UN looked to be a strong successor to the failed League of Nations. The most important statements of the norms of the international human rights regime are the Universal Declaration of the Human Rights and this declaration was adopted in 1948 by the General Assembly of this organization (Donnelly, 1986).

However, some similar contradictions of League of Nations have also taken place in this organization as well. Success of sorts in Korea and the Congo had supported UN's international image. In contrast, East European expansion of Russia and America's involvement in Vietnam could not be stopped. It was clear that the two superpowers would follow the foreign policy that they wanted to regardless of what the UN wanted. Besides, since 1945, America had been the dominant force in the UN. America provided the UN with 25% of its annual budget and expected to have a big say in final UN decisions. Within the

¹⁷ Cited from the <http://www.un.org/aboutun/unhistory/>

General Assembly, all nations regardless of wealth, military power etc., have one vote. The system is similar in the specialist agencies. However, much of the important UN work is done in the Security Council and the five nations have the right to veto a decision of the Security Council.¹⁸ The limited veto power is still critical in the UN Security Council.¹⁹ A different representation of nations in the General Assembly is argumentative and the UN is under pressure to make the Security Council more representative of the member states (O'Neill, 1996). Besides, it is known that the super powers are still reluctant to obey the advices of UN. Especially, after the final US intervention to the Iraq, the UN had lost some of its prestige. Despite some of the known problems and critics, the UN is the major agent to direct the human rights discourse in the international level.

3.6.2 The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons on their Destruction

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons on their Destruction was the first multilateral disarmament treaty banning the production of an entire category of weapons.²⁰ It was opened for the signature in 1972 and today, most of the world countries signed and ratified the convention by 2008. However, the absence of any formal verification regime to monitor compliance has limited the effectiveness of the Convention.

3.6.3 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention-CWC)

The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) was adopted by the General Assembly of UN in 1992. The Convention is the first disarmament agreement

¹⁸ Cited from the http://www.historylearningsite.co.uk/united_nations_problems.htm

¹⁹ The Council is composed of five permanent members — China, France, Russian Federation, the United Kingdom and the United States — and ten non-permanent members. Each Council member has one vote. Decisions on procedural matters are made by an affirmative vote of at least nine of the 15 members. Decisions on substantive matters require nine votes, including the concurring votes of all five permanent members. This is the rule of "great Power unanimity", often referred to as the "veto" power. (<http://www.un.org/sc/members.asp>) Ironically, all these five countries are the biggest weapon producers in the world. Besides, all of them have nuclear capacities and powers to produce atomic bombs.

²⁰ Detailed information can be found about convention on <http://www.fas.harvard.edu/~hsp/biologic.html>

negotiated within a multilateral framework that provides for the elimination of an entire category of weapons of mass destruction. The Convention prohibits all development, production, acquisition, stockpiling, transfer, and use of chemical weapons. The Secretary-General of the United Nations is the Depositary of the Convention and this was signed by 133 countries by the end of 1993.²¹ By 1 April 2008, over 38% of the total stockpiles of 70,000 tons of Category 1²² chemical weapons initially declared by States Parties had been destroyed. However, the Second Review Conference expressed its concern that more than 60% of stockpiles still remained to be destroyed.²³

Secondly, there is an organization called as The Organization for the Prohibition of Chemical Weapons (OPCW). This organization was established in 1997 and it is an independent, autonomous international organization with a working relationship with the United Nations. Today, 188 countries are the part of the convention and the members of this organization.²⁴

3.6.4 Kellogg Briand Pact

The influence of Kellogg Briand Pact can be seen in the international law: The interdiction of aggressive war was confirmed and broadened by the United Nations Charter, which states in article 2 paragraph 4:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

3.6.4.1 Kellogg Briand Pact and UN Security Council

Article 33, 39 and 51 of Kellogg Briand Pact frames the crimes against peace and it provides mission for the UN Security Council. However, several acts must be considered as the war crimes according to these articles: Hitler’s and Stalin’s invasion to Poland in 1939, Chinese attack on Korea in 1950, Iraq’s invasion of Kuwait in 1990 and US attack to Iraq in 2003. Some of them have been penetrated while the others have not.

²¹ Detailed information can be found about convention on <http://www.un.org/Depts/dda/WMD/cwc/>

²² The Convention identifies and categorizes toxic chemicals and precursors according to their potential for chemical weapons application and extent of industrial applications. Category 1 includes chemicals with high potential weapons utility and little or no industrial utility.

²³ http://www.nti.org/e_research/official_docs/inventory/pdfs/cwc.pdf

²⁴ Detailed information can be found on the official web site of the Organization: <http://www.opcw.org/>

4. Major Contradictions of International Law

Today, since the destructive days of Second World War, important developments were achieved in the issue of human rights and humanitarian law. However, there are serious realities of conflicts which have not been changed strongly. These realities show us the major contradictions in the human rights today:

The Japanese society was extremely traditional in the beginning of 1900. Thus, there was no strong demand for social and cultural rights. The emperor's words were orders for the people. Besides, the society was loyal to noble Samurais. There was no meaning for the Western rights in the Japanese society. Similarly, the Asian society of China was an authoritarian society. The power of the emperor was absolute in order to maintain the order in a stable state (Okur, 2009). As a consequence, none of these societies had an ability to criticize the national and imperial desires in their systems. Briefly, authoritarian regimes and some cultural codes can provide a natural basis for conflicts and human right violations.

Secondly, the international law can launch sanctions for old powers such as Yugoslavia however the system has actually nothing much to do for the great powers of such as China and Japan of today. Nowadays, an isolated form of independence is not possible for the countries. This makes the international law an effective tool. Especially, for the small authoritarian states a certain monitoring can be adopted. However, the international organizations that are responsible from the peace are majorly funded by super powers. The key decisions points of these organizations are under the certain effect of Westerns states. Moreover, as a consequence of technological, economical and political superiority of these powers, the usage of economic or military force is not a realistic option for these states. Thus, even an international decision is taken, it is hard to support it with sanctions for these powerful states.

On the other hand, even if the cold war was finished, the imperial interests have not been diminished. In contrast, global threads and ethnic-nationalist tendencies emerged like in the sample of Iraq war, or the terrorist organizations. The post modern condition which can be thought with political, social and economical aspects, contributed this fragmentation. Now, there are new forms of identity like regional, indigenous, immigrant-ethnic or national (Friedman, 2003). Also, in spite of these trends, in many place the nation state is existing as

major actor. It is reluctant to leave its sovereignty to supranational organizations or local groups. Therefore, this area of power provides another basis for conflict.

Finally, the western democracy is a system in itself. According to some philosophers, in the western foreign politics, the “action” is superior to “thought”. Therefore, sometimes, the primary solution of the struggles can be sought in the conflict. In the other words, “the action is not born by the law but the law is constructed as base of conflict.” After the rapid modernization, this became similar in the case of Japan. When the Japan became an imperial colonial power, it only adopted the “useful” sides of international human rights discourse. It demanded equality for Asian societies to free its area from the western colonial domination.

5. Conclusion

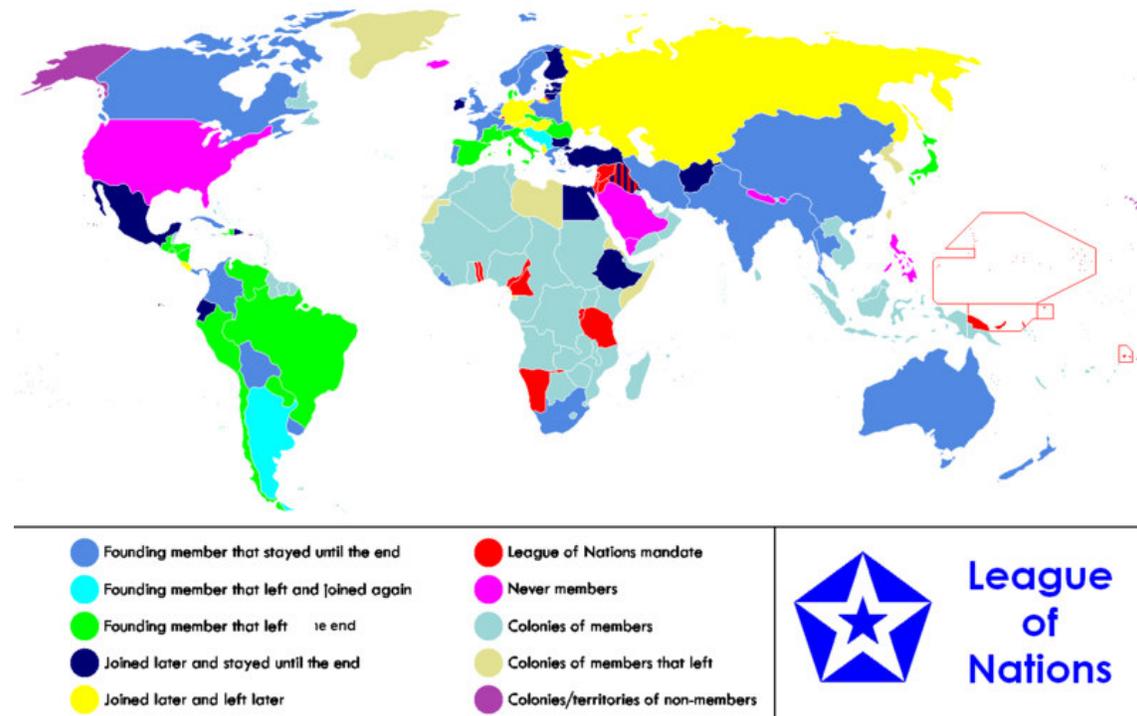
In summary, the Second Sino-Japanese War was one of the most violent conflicts of the human history which included a great mass of civil loses. Several human right violations and war crimes were committed during this war. This paper includes the most significant types of human right violations in that period. These crimes were one of the most organized crimes against human rights. Most of these violations were committed by the special units of Imperial Japan Army. In the post war conditions, these issues became a focus point of human rights. However, the post war world powers have not neglected to benefit from the results of these war crimes. Furthermore, these powers made similar violations against human rights after a short while. According to the many thinkers, the usage of two atomic bombs against Japan civilians was also a massacre. Countless innocent Japanese women and children and other civilians in Hiroshima and Nagasaki were subjected by the atomic bomb whereas, Japan had lost the superiority due the Chinese resistance before 1945. After nearly 30 years, the US used Napalm bombs on civilians in Vietnam in 1972. Under these conditions, it can be argued that some developments can be achieved in the international law. However, it must be interrogated if the nations are really willing or reluctant to respect the rules under the pressure of national interests.

To conclude, it is extremely difficult to understand the international law without a paradigm of international politics. The people built the law with their common sense. However, the law is still a stranger to human. Human are looking for holes to escape from their own invention. Thus, there is problem of operationalization of law. Probably, the fair question

would be that “in what way the people can make law living in them?” The sovereignty and imperial desires are obstructing modern nation state to act in this way. Maybe, the globalization and the post modern transformation can bring opportunities. However, it must not be underestimated that these opportunities will come with the new tendencies of human right violations and conflicts. On the other hand, despite serious problems and contradictions in the international law, it is the major source of light for the peace and conflict resolution in today’s world.

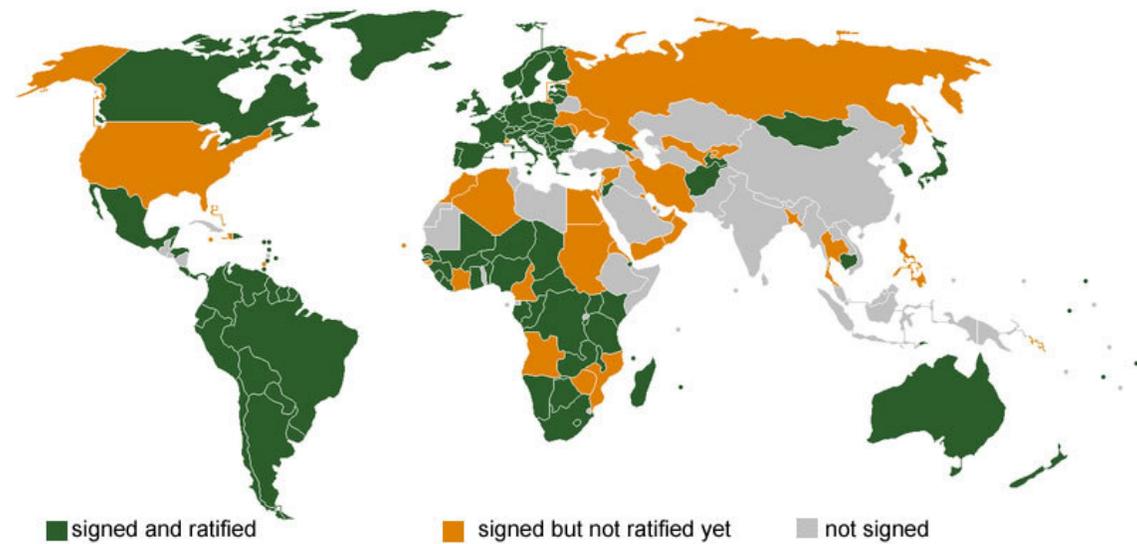
Appendices

Appendix A: Members of League of Nations



Source: http://en.wikipedia.org/wiki/League_of_Nations

Appendix B: Members of ICC by 2009



Source: http://en.wikipedia.org/wiki/International_Criminal_Court

Bibliography

Books & Articles

Brook, Timothy (2001). The Tokyo Judgment and the Rape of Nanking, *The Journal of Asian Studies*, Vol. 60, No. 3, pp. 673-700, Association for Asian Studies

Catchpole, Brian & Hall, Simon & Barratt, Edward (2001). *Cassell's Atlas of World History*, Andromeda Oxford Limited, London

Coble, Parks M. (2007). China's "New Remembering" of the Anti-Japanese War of Resistance, 1937–1945, *The China Quarterly*, 190:394-410 Cambridge University Press

Donnelly, J. (1986). International Human Rights: A Regime Analysis *International Organization*, Vol. 40, No. 3, pp. 599-642, The MIT Press

Friedman, Jonathon (2003). Globalization, Dis-integration, Re-organization The Transformation of Violence, *Globalization, the State and Violence*, Rowman & Littlefield Publisher

Jeans, Roger B. (2005). Victims or Victimizers? Museums, Textbooks, and the War Debate in Contemporary Japan, *The Journal of Military History*, Vol. 69, No. 1, pp. 149-195, Society for Military History

Okur, İbrahim (2009). *Japonya Bir Yükselişin Kısa Hikayesi*, Okursoy Kitapları 9, R Ajans, Bursa

O'Neill, B. (1996). Power and Satisfaction in the United Nations Security Council, *The Journal of Conflict Resolution*, Vol. 40, No. 2, pp. 219-237

Walden, E. A. (1938). The Sino-Japanese War and the Open Door, *International Affairs*, Royal Institute of International Affairs 1931-1939, Vol. 17, No. 5, pp. 629-654, Blackwell Publishing on behalf of the Royal Institute of International Affairs

Williamsen, Thomas, Marvin (1998). The Second Sino-Japanese War 1931-1945, *World War II in Asia and the Pacific and the War's Aftermath, with General Themes A Handbook of Literature and Research* (ed. Loyd E. Lee), Greenwood Publishing

Conference Papers

Phillips, Steven (2000). English Language Primary Sources on China at War, 1937-1945, Conference on the China War, 1937–1945 Tokyo, Japan

Audio-Visual Media

Nelson, Eric & Maday Charlie, Dietrich-Segarra, Beth (Executive Producer) (1998). Unit 731: Nightmare in Manchuria, A World Justice Documentary, History Channel International

Internet Sites

<http://www.un.org/aboutun/unhistory/> (Consulted December,2009)

<http://www.princeton.edu/~nanking/html/main.html> (Consulted December,2009)

<http://www.un.org/disarmament/WMD/Bio/1925GenevaProtocol.shtml>_(Consulted December, 2009)

http://www.historylearningsite.co.uk/united_nations_problems.htm (Consulted January,2010)

http://wapedia.mobi/en/Second_Sino-Japanese_War (Consulted December,2009)

<http://www.un.org/Depts/dda/WMD/cwc/> (Consulted December,2009)

<http://www.worldwar2database.com> (Consulted December,2009)

<http://www.icrc.org/IHL.NSF/FULL/195?OpenDocument> (Consulted December,2009)

http://wwi.lib.byu.edu/index.php/Washington_Treaty_in_Relation_to_the_Use_of_Submarines_and_Noxious_Gases_in_Warfare (Consulted January,2010)

<http://net.lib.byu.edu/~rdh7/wwi/versailles.html> (Consulted December,2009)

<http://www.yale.edu/lawweb/avalon/imt/kbpact.htm> (Consulted December,2009)

<http://www.fas.harvard.edu/~hsp/biologic.html> (Consulted December,2009)

<http://www.opcw.org/> (Consulted December,2009)

http://www.nti.org/e_research/official_docs/inventory/pdfs/cwc.pdf_(Consulted January,2010)