

Cicie Deng – IHRP Summer Internship Final Report 2012

The research topic I undertook for my IHRP internship with Toronto ALPHA was studying the legal responsibilities of the Japanese government in producing and using biological and chemical weapons in China during World War II. The internship started in May and ended at the beginning of August, lasting for 10 weeks. I travelled to four countries (U.S., China, Korea, and Tokyo) and 8 cities, including Washington D.C., Beijing, Shanghai, Nanjing, Harbin, Quzhou, Seoul and Tokyo, to meet with scholars and conduct research for my topic. During my trip, I met with well-respected history and legal scholars as well as both Chinese and Japanese lawyers who have represented Chinese victims in lawsuits against the Japanese government for their actions during WWII. I also studied at the Unit 731 Research Institute of the Harbin Academy of Social Sciences and the collaborating Japanese Army Unit 731 Crime Evidence Museum for one month in order to gain a more comprehensive understanding of the historical background. Furthermore, I participated in the physical examination sessions conducted by a group of Japanese physicians for Chinese victims of abandoned chemical weapons and interviewed a number of the victims. I later travelled to Quzhou in Southern China to meet with victims of biological warfare, particularly those who have contracted anthrax, and family members of victims who died from plague bacteria spread by the Japanese Army (see attached pictures). During my last stop in Tokyo, I visited the Yasukuni Shrine, which enshrines a number of Class A war criminals from WWII and houses a war museum that contains exhibits which attempt to obscure the true history of WWII with biased descriptions and have raised much controversy across victimized Asian countries.

As of now I am working on the final report for IHRP, I will give a brief summary of the historical background and the main legal issues below.

Since the Japanese occupation of the Northeastern region of China and the establishment of Manchuria in 1931, the Japanese Imperial government under the reign of Emperor Hirohito started pursuing biological weapons research as a more effective way of conducting warfare in China. In 1939, the Japanese military established the infamous Unit 731 in the Pingfang District of Harbin in Heilongjiang province. In name, Unit 731 belonged to the Japanese Kwantung Army and was officially called the Epidemic Prevention and Water Purification Department, but in actuality it was directly led by the Imperial Japanese Army General Staff Office. The unit also employed many different names, which were used for the purpose of concealing the true identity of this unit and its secret activities.

Unit 731 was dedicated to the research of biological warfare, production of bacteriological weapons and human experimentation. As Japan's control of China expanded, the Japanese Army established more subsidiary units for researching and producing biological weapons in other Chinese regions, including Kwantung Army Unit 100, Beijing Unit "Kou" 1855, Nanjing Unit "Ei" 1644, Guangzhou Unit "Nami" 9604, and Singapore Unit "Oka" 8604. There were also four detachments under Unit 731 located in areas close to Harbin. Unit 731 consisted of four departments for researching and producing biological weapons, an operations department and a department of education for training soldiers and youth members. The main types of bacteria being researched for warfare use included bubonic plague, cholera, anthrax, gangrene, typhoid, and paratyphoid. The bacteria were tested on small animals and humans. Human experimental subjects were used for various lethal experiments such as bacterial

infection, burning, freezing, animal-human blood transfusions, sexually transmitted diseases, vacuum studies and vivisections. These subjects were mostly anti-Japanese activists, suspected Soviet spies, and civilians who were captured by the Kwantung Military Police. It is estimated from testimonies that at least 3000 victims died from human experimentation in Unit 731. The victims included men, women, children and elderly people, as well as people from different ethnicities, namely Chinese, Mongolian, Russian and Korean. Subsequently in 1940 and 1942, the Japanese Army launched two main attacks using biological weapons in Southern China, causing widespread plague outbreaks which lasted for years after the war ended.

During the same period of time, Japanese military also began research in chemical warfare in the Narashino Chemical Warfare School in Tokyo and Unit 516 in Qiqihar, China. Various chemical weapons were manufactured on Okunoshima, an island close to Hiroshima. Some of the chemicals were transported to Unit 731 for testing on human subjects.

The use of biological and chemical weapons by Japan was a violation of the 1907 Hague Convention and the 1925 Geneva Protocol. However, after WWII, the officers of Unit 731 were escaped prosecution during the International Military Tribunal for the Far East after the U.S. Department of State agreed to grant them immunity in exchange for Unit 731's research results. Some officers from Unit 731 and other subsidiaries were captured in the Soviet Union and China and were successfully prosecuted during the Khavarsk and Shenyang Trials.

In the 1990's, many Chinese victims initiated litigations against the Japanese government for the damages they suffered due to biological and chemical warfare during the war but all were unsuccessful. There are three main arguments used by the Japanese government in denying its legal responsibilities, which were adopted by Japanese courts in their decisions. They are: 1) individuals have no claim against a state in international law; 2) the country takes no legal responsibility for the actions of civil servants or officials acting under state power; and 3) individuals' claims for compensation have already been waived in the San Francisco Peace Treaty (SFPT) in 1951 and Sino-Japanese Joint Communiqué in 1972. However, from applications of relevant rules in case law and through examining the development of international law and fundamental respect for human rights as exhibited by most civilized countries, the arguments are not without their weaknesses. For the first argument, even if traditionally individuals are not considered subjects of international law like states are, their substantive rights are recognized by Article 3 in the 1907 Hague Convention. Therefore they should be able to seek compensation domestically from the state in a signatory country, such as Japan. As for the second point, the major weakness is that this doctrine was only applicable during the rule of imperialism and to Japanese citizens, but should not apply to Chinese plaintiffs. Lastly, China was not a signatory to the SFPT and has never showed any intention to waive its nationals' rights to make compensation claim against Japan in the Joint Communiqué, therefore it should not be bound by the SFPT and the individuals' rights to seek compensation still exist.

Website of the Japanese Army Unit 731 Crime Evidence Museum (Chinese):
<http://www.731museum.org.cn/>

Website of the Unit 731 Biological Warfare Resource Centre (Japanese):
<http://www.anti731saikinsen.net/>