

HUMAN RIGHTS LAW AND SOCIAL HEALING THROUGH JUSTICE FOR CHEJU MASSACRES (1947-1954): THE UNITED STATES' UNLAWFUL ACTS AND OMISSIONS

Sang-Soo Hur *

I. INTRODUCTION

Professor Yamamoto reminded me of the importance and value of human rights law research. He made me realize the hope and vision needed to solve the long-term conflict task that has long been followed by stagnation and distortion. Initial efforts for Jeju reparations were made when President Roh Moo Hyun apologized following a government investigation report under the Truth and Honor Restoration Act on the Jeju April 3rd events,¹ later implemented during President Kim Dae-jung's time when he severely violated human rights.² However, the Lee Myung-bak and Park Geun-hye governments appeared to distort and deny the performance of previous administration's implementation period.³ Thus, the social healing needed to establish transitional justice in South Korea has been slow, stagnated, and long delayed. Professor Yamamoto's new book, *Healing the Persisting Wounds of Historical Injustice: United States, South Korea and the Jeju 4-3*

* Former Professor at Sungkonghoe University, South Korea; President of the Korea Social Science Association.

1. See Roh Apologizes for 1948 Jeju Massacre, UPI (Apr. 3, 2006, 6:27 AM), <https://www.upi.com/Roh-apologizes-for-1948-Jeju-massacre/12041144060070/> [<https://perma.cc/Y7BH-WB5E>].

2. See Gordon G. Chang, *Kim Dae-jung's Disappointing Legacy*, FORBES (Aug. 21, 2009, 12:01 AM), <https://www.forbes.com/2009/08/20/kim-dae-jung-south-korea-kim-jong-il-opinions-columnists-gordon-chang.html?sh=3f89d10d34ac> [<https://perma.cc/P5SM-XQVW>].

3. See Reuters Staff, *South Korea Jails Former President Lee For 15 Years On Corruption Charges*, REUTERS (Oct. 4, 2018, 11:23 PM), <https://www.reuters.com/article/us-southkorea-politics-corruption/south-korea-jails-former-president-lee-for-15-years-on-corruption-charges-idUSKCN1MF0J1> [<https://perma.cc/K5EN-JLUC>].

Tragedy,⁴ makes an important step toward solving the ideological, political, and cultural conflict that led to the torpidity of reparation efforts. Through interdisciplinary research, the book emphasizes that social healing through justice is urgently needed to soothe the deep sorrow and heal the pain left by the enormous slaughter, wounds, and lethargy of long-term trauma caused by the Cheju (Jeju) massacres from 1947 to 1954.⁵

What is needed to cure serious and grave human rights violations, such as massacre? I believe that social healing through justice proposed by Yamamoto is a victim-centered solution to gross human rights violations on a large scale, such as the massacre of civilians, as well as an effective approach to reparation and reconciliation in theory and in practice. Above all, civilized members of society must participate and approach these violations from a new perspective. Is America a civilized country? Does a civilized country mean a democracy that values human life, operates through the rule of law, and guarantees the right to justice for crimes? A civilized country's executive, legislative, and judicial branches form a democracy that faithfully fulfills its original duty in accordance with the principle of separation of three powers. At the end of the nineteenth century, the United States emerged as a hegemonic power in the Western Hemisphere.⁶ Since then, the U.S. has set a crucial security goal to prevent the rise or emergence of another hegemony that has the potential to threaten U.S. national security.⁷ After World Wars I and II, U.S. strategists argued that forces seeking to control Eurasia should be regarded as potential adversaries of the U.S.⁸ While experiencing the war in Korea, the U.S. became concerned about the rise of another hegemony in Northeast Asia rather than Europe.⁹

4. ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY* (2021).

5. Sang-Soo Hur, *Value of the Human Rights Law, Legal Approach and the Possibility of a Political Settlement*, 11 *WORLD ENV'T & ISLAND STUD.* 137, 138-39 (2021); see also Sang-Soo Hur, *Ten Points on U.S. Responsibilities in the Jeju Massacres (1947-1954): An American Crime Story*, *WALDEN KOR. J.* 24-40 (2022) [hereinafter Hur, *Ten Points on U.S. Responsibilities in the Jeju Massacres*] (discussing the Jeju massacres that took place during 1947-1954).

6. Christopher Layne, *America as European Hegemon*, 72 *NAT'L INT.* 17, 18 (2003).

7. See BARRY R. POSEN, *THE SOURCES OF MILITARY DOCTRINE: FRANCE, BRITAIN, AND GERMANY BETWEEN THE WORLD WARS* 61 (1984).

8. MELVYN P. LEFFLER, *SAFEGUARDING DEMOCRATIC CAPITALISM: U.S. FOREIGN POLICY AND NATIONAL SECURITY, 1920-2015*, at 132 (2017).

9. See HENRY KISSINGER, *DOES AMERICA NEED A FOREIGN POLICY? TOWARD A DIPLOMACY FOR THE 21ST CENTURY* 113-114 (2002).

II. THE UNDENIABLE FACTS

Syngman Rhee emigrated to the U.S. in 1904 with the help of Min Young-hwan, a Korean government official near the end of the Joseon Dynasty. Rhee's plan was to stop the Japanese aggression with the help of the U.S.¹⁰ In 1905, Rhee appealed to U.S. President Theodore Roosevelt to support Korea's independence, but he sensed that the U.S. President had thoroughly deceived him.¹¹ In 1919, Rhee tried to attend the Paris Peace Conference as President of the Provisional Government of the Republic of Korea but was unable to join because of opposition by international "big powers" and U.S. President Woodrow Wilson, who formerly held several key roles at Princeton University, including President and Professor.¹²

In May 1941, Han Kil-su (Kilsoo Kenneth Haan), leader of the Korean National Revolutionary Party, demanded that the U.S. put economic pressure on Japan.¹³ He announced that Korean guerrillas in northern China would continue to resist Japanese forces. As a result, Han Kil-su requested that the U.S. issue an official statement supporting Korea's independence and praising its guerrilla activities.¹⁴ President Kim Koo of the Provisional Government of the Republic of Korea made many efforts to obtain support from China and the U.S.¹⁵ Korean Foreign Minister Tjo So-wang (趙素昂)

10. See Yangjae Lee, *Freemasons and the Ten Lost Tribes of Korea and Israel: Rediscovery of National Spirit*, TONGIL NEWS (Feb. 15, 2022, 3:01 AM), <http://www.tongilnews.com/news/articleView.html?idxno=204326> [<https://perma.cc/9KDN-2LTM>].

11. See *id.*; see also Kirk W. Larsen & Joseph Seeley, *Simple Conversation or Secret Treaty? The Taft-Katsura Memorandum in Korean Historical Memory*, 19 J. OF KOREAN STUD. 59, 69 (2014).

12. See Sarah Kim, *Provisional Government Was Active on Global Stage*, KOREA JOONGANG DAILY (Apr. 17, 2019), <https://koreajoongangdaily.joins.com/2019/04/17/politics/Provisional-govt-was-active-on-global-stage/3062018.html> [<https://perma.cc/C68J-PL9L>]; see also Richard Pennington, *Koreans Ignored at 1919 Paris Peace Conference*, KOREA TIMES (June 7, 2019, 5:03 PM), http://www.koreatimes.co.kr/www/opinion/2020/01/197_270064.html [<https://perma.cc/EP29-8EEP>]; ROBERT T. OLIVER, SYNGMAN RHEE AND AMERICAN INVOLVEMENT IN KOREA, 1942-1960, A PERSONAL NARRATIVE 239 (1978); *About Woodrow Wilson*, WILSON CTR., <https://www.wilsoncenter.org/about-woodrow-wilson> [<https://perma.cc/N8ZY-ZMUX>].

13. See Brian Masaru Hayashi, *Kilsoo Haan, American Intelligence, and the Anticipated Japanese Invasion of California, 1931-1943*, 83 PAC. HIST. REV. 277, 278 (2014).

14. See Memorandum of Conversation, by George Atcheson Jr., the Assistant Chief of the Division of Far Eastern Affairs (Dec. 1, 1942), in 1 FOREIGN RELATION OF THE UNITED STATES: DIPLOMATIC PAPERS 1942, at 878 (1960).

15. See generally Duk-Hwa Hong, *Kai-shek Chiang's Support on Provision Korean Government; What Was His Intention?* YONHOP NEWS (Mar. 4, 2019), <https://www.yna.co.kr/view/AKR20181022011000501?input=1179m> [<https://perma.cc/4K7G-34AY>].

repeatedly asked U.S. Secretary of State Cordell Hull to support the Korean government in fighting for the independence of Korea.¹⁶

In June 1941, President Kim Koo reinstated Syngman Rhee, who was in the U.S., and submitted the credentials of the official representative of the Republic of Korea to the U.S.¹⁷ U.S. President Roosevelt rejected the request to recognize any Korean asylum groups, including the Provisional Government of the Republic of Korea.¹⁸ On December 9, 1941, President Kim Koo requested that the U.S. recognize his appointment in the Republic of Korea.¹⁹ Syngman Rhee urged the U.S. and China to approve the Provisional Government of the Republic of Korea.²⁰ He also emphasized to the U.S. that the Soviet Union was interested in the fate of the Korean Peninsula.²¹

Rhee said that if the U.S. did not quickly acknowledge the Provisional Government of the Republic of Korea, the Soviet Union would ravage the entire Korean Peninsula before democratically-elected Korean nationalists could even set foot on it.²² He argued that there was a possibility of establishing the Korean government, while any such Russian intervention would seriously damage not only the interests of Joseon, but also the interests of China and the U.S.²³

President Roosevelt envisioned a trusteeship of the Korean Peninsula from 1943 to the end of World War II and consulted with the heads of state

16. See Letter from George Atcheson, The Charge in China, to the Secretary of State (Mar. 1, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1944, at 1024 (1969).

17. See Letter from Kim Gu (Kim Koo), Executive Chief of the Provisional Government of the Republic of Korea, to President Roosevelt (June 6, 1941), in 1 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1942, at 859-60 (1960).

18. See Letter from Cordell Hull, the Secretary of State, to C.E. Gauss, the Ambassador in China (May 7, 1942), in 1 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1942, at 873-74 (1980).

19. See JAMES IRVING MATRAY, THE RELUCTANT CRUSADE: AMERICAN FOREIGN POLICY IN KOREA 1941-1950, at 9 (1977).

20. See Letter from Syngman Rhee, the Chairman of the Korean Commission in the United States, to President Roosevelt (May 15, 1943), in 3 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1943, at 1093-94 (1963).

21. See *id.*; see also Letter from James C. Dunn, the Acting Secretary of State, to Hurley, the Ambassador in China (Feb. 20, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 1023 (1969).

22. See Letter from Syngman Rhee, the Chairman of the Korean Commission in the United States, to Frank P. Lockhart, the Acting Chief of the Office of Far Eastern Affairs (July 25, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, 1035-36 (1969).

23. See Letter from James C. Dunn, the Acting Secretary of State, to Hurley, the Ambassador in China (Feb. 20, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 1023 n.15 (1969).

of great powers.²⁴ However, President Roosevelt did not consult with or notify any Korean people of his vision.²⁵ This recklessness and omission did not respect the value and spirit of liberal internationalism that the U.S. was proud of, and essentially served as a denial of Korea's right to self-determination.

President Roosevelt and Soviet President Joseph Vissarionovich Stalin verbally agreed at the Yalta Conference in February 1945 that the U.S. and Soviet Union would divide the Korean Peninsula into South and North, and the Soviet Union would occupy the northern part of the Korean Peninsula while the U.S. would divide and occupy South Korea.²⁶ While preparing for the Yalta Conference, the U.S. State Department thought that the Korean Peninsula was nothing more than collateral for negotiations.²⁷ The U.S. had the intention of occupying and dividing the Korean Peninsula among several countries.²⁸ Despite perceiving Russia as a questionable nation, in order to achieve the goal of winning World War II while minimizing the damage to the U.S. military, President Roosevelt joined hands with the devil and asked Stalin to participate in the Far East Front to avoid the larger risk of losing the war.²⁹

Since early 1944, U.S. Department of Defense and State Department officials thought that the Korean Peninsula would have to be divided or occupied entirely.³⁰ Stanley K. Hornbeck of the U.S. Department of State thought that recognizing the Provisional Government of the Republic of Korea in China would pose an unacceptable burden on the U.S. government

24. See Masao Okonogi, *The Shifting Strategic Value of Korea, 1942-1950*, 3 KOREAN STUD., 49, 51 (1979); see also William Stueck, *The United States, the Soviet Union, and the Division of Korea: A Comparative Approach*, 4 J. AM. E. ASIAN RELS. 1, 3 (1995).

25. See Letter from Syngman Rhee, the Chairman of the Korean Commission in the United States, to President Truman (May 15, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 1028 (1969); see also Letter from Syngman Rhee, the Chairman of the Korean Commission in the United States, to President Truman (July 21, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 1031 (1969); Letter from Syngman Rhee, the Chairman of the Korean Commission in the United States, to Lockhart, the Acting Chief of the Office of Far Eastern Affairs (July 25, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 1032 (1969).

26. See Stueck, *supra* note 24, at 3-4.

27. See JOSEPH C. GOULDEN, *KOREA, THE UNTOLD STORY OF THE WAR* 16 (1982).

28. See *id.*

29. See JOHN LEWIS GADDIS, *STRATEGIES OF CONTAINMENT: A CRITICAL APPRAISAL OF AMERICAN NATIONAL SECURITY POLICY DURING THE COLD WAR* 5-7 (2005).

30. See BRUCE CUMINGS, *THE ORIGINS OF THE KOREAN WAR: LIBERATION AND THE EMERGENCE OF SEPARATE REGIMES 1945-1947*, at 113 (1981).

in the future.³¹ U.S. government officials erroneously decided that it is better not to approve the Provisional Government of the Republic of Korea.

In April 1945, U.S. Navy Chief of Staff James Forrestal and Army Secretary Henry Stimson urged the U.S. State Department to abandon the vague notion of trusteeship and completely occupy the territories sought by the U.S.³² Shortly after President Roosevelt's death on April 12, 1945, the U.S. Department of Defense and the military took the lead in handling the U.S. policy on the Korean Peninsula.³³

In 1945, U.S. intelligence authorities believed that the Korean Peninsula could be reunified through the trusteeship of the four countries.³⁴ The U.S. concluded that the Soviet Union was showing no intention to stay in North Korea.³⁵ In May 1945, Douglas MacArthur, commander-in-chief of the U.S. Far East Army, conceived a three-stage plan to occupy the Korean Peninsula.³⁶ The first stage was to occupy Seoul and Incheon, the second stage was to occupy the Pusan region, and the third stage was to occupy the Kunsan region.³⁷

On September 8, 1945, Lieutenant General John R. Hodge, who became Commanding General of the U.S. Army Forces In Korea (USAFIK), was tasked with giving the U.S. control of South Korea.³⁸ Despite opposition from the Soviet Union, the U.S. officially pursued the division of the Korean Peninsula to secure its political influence in South Korea.³⁹ Just before Hodge went to the region south of the 38th parallel, he was instructed by the U.S. to establish a government that was in line with U.S. policy in the Korean Peninsula.⁴⁰ Before the U.S. Military Government agents moved to South Korea, Japan's advisor to the Far East Command gave these agents the impression that one of the main tasks of the military administration in South Korea was to build a bastion against communism.⁴¹

31. See Hyun Woong Hong, *American Foreign Policy Toward Korea, 1945-1950* (May 2007) (Ph.D. dissertation, Oklahoma State University) (on file with author).

32. See CUMINGS, *supra* note 30, at 111.

33. See *id.* at 120-22.

34. See JAMES F. SCHNABEL & ROBERT J. WATSON, *THE JOINT CHIEFS OF STAFF AND NATIONAL POLICY, VOLUME III 1950-1951: THE KOREAN WAR, PART ONE* 6 (1998).

35. See SHEN ZHIHUA, MAO, STALIN AND THE KOREAN WAR: TRILATERAL COMMUNIST RELATIONS IN THE 1950S, at 32-33 (Neil Silver trans., 2012) (2003).

36. CUMINGS, *supra* note 30, at 122-23.

37. *Id.* at 123.

38. See SCHNABEL & WATSON, *supra* note 34, at 5.

39. See MARTIN HART-LANDSBERG, *KOREA: DIVISION, REUNIFICATION, AND U.S. FOREIGN POLICY* 70 (1998).

40. See MAX HASTINGS, *THE KOREAN WAR* 34-35 (1987).

41. See E. GRANT MEADE, *AMERICAN MILITARY GOVERNMENT IN KOREA* 52 (1951).

Occupation must be temporary and not act as dominant state power. The issue was whether the U.S. occupation of South Korea was justified under international law. Did the U.S. military view the Korean Peninsula as an “occupied” area? Or was it seen as a “liberated” area? The U.S. included the Korean Peninsula in the category of occupied territory even though the Cairo Declaration should have clearly stated that Korea should be treated as a “liberated” region.⁴² The U.S. did not even distinguish between the “occupied” and “liberated” areas of the Korean Peninsula.⁴³

Hodge’s policy adviser disagreed with the U.S. President’s plan for the future of the Korean Peninsula. He reported to the Secretary of State that he believed, from both “moral and practical standpoints,” that the concept of trusteeship could not be applied to the Korean Peninsula, and that it should be dropped.⁴⁴ A month before the Moscow Tripartite Conference, Hodge commented to the Joint Chiefs of Staff through MacArthur: “Koreans want independence more than anything and want it now The situation in South Korea makes extremely fertile ground for establishment of Communism In the minds of all Koreans, ‘Trusteeship’ hangs over them as a sword of Damocles. If it is imposed now or at any future time it is believed possible that the Korean people will actually and physically revolt.”⁴⁵

However, about ten days later, foreign ministers of the U.S., Britain, and the Soviet Union met in Moscow and agreed to establish a provisional government and trusteeship on the Korean Peninsula.⁴⁶ With regard to the future of the territory, the major actors presented only different ideas and positions. The most shocking thing is that the U.S. did not inform any Koreans about the process and contents of such a big change, did not discuss or consult them at all, and essentially ignored them.⁴⁷

Hodge, Commanding General of the USAFIK, conducted a harsh military administration after the occupation of South Korea.⁴⁸ One of the reasons for this hostile occupation was the insistence of the U.S. Army and

42. GREGORY HENDERSON, *KOREA, THE POLITICS OF THE VORTEX* 122 (1968).

43. *See id.*; *see also* RICHARD E. LAUTERBACH, *DANGER FROM THE EAST* 201 (1947) (noting Hodge’s famous remark that Koreans “are the same breed of cats as the Japanese”).

44. *See* Letter from William Langdon, the Acting Political Adviser in Korea, to the Secretary of State (Nov. 20, 1945), *in* 6 *FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945*, at 1130-31 (1969).

45. *See* Report from Douglas MacArthur, General of the Army, to the Joint Chiefs of Staff (Dec. 16, 1945), *in* 6 *FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945*, at 1145-46 (1969).

46. CUMINGS, *supra* note 30, at 216-18.

47. *See id.*

48. *See id.* at 126-27.

Navy.⁴⁹ This was because the heroes of these wars insisted that the U.S. maintain strict control over territories designated as trusteeships for strategic reasons in areas occupied by Japanese forces.⁵⁰

After three months of occupying the region south of the 38th parallel, the U.S. military government, led by General Hodge, established the foundation of the political structure of postwar South Korea.⁵¹ Americans centered on Hodge not only built an exclusive structure, but also chose the people who would operate these structures.⁵² This choice made by the U.S. military had a profound impact on Korean society.⁵³ According to the official history of the U.S. Army Military Government in Korea (USAMGIK), the basic principles guiding the U.S. efforts on the Korean Peninsula were first to create “an orderly, efficiently operated, and *politically friendly* Korea.”⁵⁴ Another goal, which differs from the publicly stated goal, was to “physically . . . occupy a part of Korea and to assure (itself) thereby that no other power would control the situation exclusively.”⁵⁵

The U.S. began to treat Koreans as objects of occupation rather than liberation, and the goal became one of control rather than protection. The 1943 Cairo Declaration stipulated that Koreans were in a “colonial state,” which saw Joseon (Kaesong) not as an enemy of the U.S., but as a victim of the aggression of Japan, an enemy of the U.S.⁵⁶ In a message sent to the U.S. Army 24th Corps stationed in Okinawa on August 14, 1945, General Joseph Stilwell declared that the occupation of the Korean Peninsula should be regarded as “semi-friendly.”⁵⁷ In other words, all residents, with the exception of the “five percent of the population who [were] Japanese” should be “considered friendly.”⁵⁸

By the end of August 1945, General MacArthur ordered the 24th Corps under General Hodge to regard the Korean Peninsula as a zone “liberated” from the enemy.⁵⁹ However, on September 4, 1945, General Hodge instructed the officers under his command that the Korean Peninsula is “an

49. *See id.* at 127.

50. *See* Memorandum by Henry L. Stimson, the Secretary of War, to the Secretary of State (Jan. 23, 1945), in 1 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 25 (1967).

51. *See* CUMINGS, *supra* note 30, at 135.

52. *See id.*

53. *See id.*

54. *Id.* at 136.

55. *Id.*

56. *See id.* at 106.

57. *Id.* at 126.

58. *Id.*

59. *See id.*

enemy of the United States” and thus “subject to the provisions and the terms of the surrender.”⁶⁰ In one day, Koreans came to be regarded as hostile forces by the U.S. military.⁶¹

As of September 1945, the only written law on military occupation was codified in The Hague Convention IV on Land Wars, which was prepared at the 2nd Hague Peace Conference in 1907.⁶² According to the Convention, military occupation occurs only during warfare, must be limited to the territory of the belligerent country, and must be applied only for the purpose of simple military necessity.⁶³ The U.S. military was supposed to be guided by the Field Manual,⁶⁴ but they did not hesitate to act beyond the set boundaries of military occupation, and did not comply the compulsory provisions of any international human rights norms.⁶⁵

On September 16, 1945, Hodge called for the establishment of the Korean Democratic Party, which was predominantly made up of “large land owners and wealthy businessmen,” during the Japanese imperialist occupation.⁶⁶ Millard Preston Goodfellow, who served as the deputy director of the Office of Strategic Services, the predecessor of the U.S. Central Intelligence Agency, went to South Korea with the intent to set up a separate, anticommunist government.⁶⁷ George Atcheson Jr., a policy adviser to the Far East Command in Tokyo, Japan, named Syngman Rhee, Kim Koo, and Kim Kiusik (Kimm Kyusik) as leaders of the organization, to operate under the direction and cooperation of the U.S. Military Government.⁶⁸ Hodge decided to promote the establishment of a single government in South Korea centered around these leaders and John J. McCloy of the U.S. Department of

60. *Id.*

61. *See id.*

62. *See generally* 1907 Hague Convention IV, in *The Hague Conventions of 1899 (II) and 1907 (IV) Respecting the Laws and Customs of War on Land*, Oct. 18, 1907, 36 Stat. 2277.

63. *Id.* at 3-4, 8-9.

64. *See generally* U.S. WAR DEP’T. FM 27-10, BASIC FIELD MANUAL: RULES OF LAND WARFARE (1940); U.S. WAR DEP’T. FM 27-5. BASIC FIELD MANUAL: MILITARY GOVERNMENT (1940).

65. *See generally* Sahr Conway-Lanz, *The Struggle to Fight a Humane War: The United States, the Korean War, and the 1949 Geneva Conventions*, in *DO THE GENEVA CONVENTIONS MATTER?* 69-104 (Matthew Evangelista & Nina Tannenwald eds., 2017).

66. *See* CUMINGS, *supra* note 30, at 92-93.

67. BRUCE CUMINGS, *KOREA’S PLACE IN THE SUN: A MODERN HISTORY 194-95* (2nd ed. 2005).

68. Telegram from George Atcheson Jr., the Acting Political Adviser in Japan, to the Secretary of State (Oct. 15, 1945), in *6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945*, at 1091-92 (1969).

State, who visited South Korea in November 1945, supported this initiative.⁶⁹ McCloy's reasoning stemmed from his fear that communists would take over South Korea.⁷⁰

Hodge and his aides came up with a four-step plan in November and December 1945.⁷¹ The first step was to organize the army to defend the 38th parallel; the second step was intended to strengthen the police organization in South Korea; third was to strengthen ties with right-wing parties; and the fourth step was intended to promote and implement projects, including suppressing Koreans who opposed the U.S. policies and its military government in Korea.⁷² In particular, Hodge wanted to establish a military organization and a single government in South Korea.⁷³ Hodge stated that he was "very interested in establishing a Korean Army from the beginning of the Occupation, not only to relieve American troops of many details in handling Korean security, but to get a start for the future when we accomplished our mission of setting up a Korean Government."⁷⁴

On November 20, 1945, U.S. Commander Hodge drafted a plan to establish South Korean armed forces (army, navy, air force, and coast guard) to the Far East Command in Tokyo, Japan and on November 26, MacArthur forwarded the plan to Dwight David Eisenhower, Chief of Staff of the U.S. Army.⁷⁵ In December 1945, the U.S. military established a plan to create a defense organization in South Korea, and on December 5, it founded the Military English Language School to educate officers of the National Defense Guard in English.⁷⁶ The School produced 110 officers, 108 of which were Japanese military officers or non-commissioned officers,⁷⁷ seventy-eight were promoted to generals, and thirteen became chiefs of staff.⁷⁸ There was no legal justification for the occupying troops to lead the formation of the Occupied Protectorate's armed forces, or to create the Military English Language School intended to train officers.⁷⁹

69. See Telegram from John J. McCloy, the Assistant Secretary of War, to Dean Acheson, the Under Secretary of State, (Nov. 13, 1945), in 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, at 1122-23 (1969).

70. See *id.* at 123.

71. CUMINGS, *supra* note 67, at 200.

72. *Id.*

73. *Id.*

74. *Id.* at 201.

75. See CUMINGS, *supra* note 30, at 170; see also SCHNABEL & WATSON, *supra* note 34, at 5.

76. CUMINGS, *supra* note 30, at 171, 173.

77. Allan R. Millett, *Captain James H. Hausman and the Formation of the Korean Army, 1945-1950*, 23 ARMED FORCES AND SOC'Y 503, 511 (1997).

78. *Id.* at 512.

79. See CUMINGS, *supra* note 30, at 170-71.

By third week of November 1945, General Hodge and his aides had sought to replace President Roosevelt's plan to govern the Korean Peninsula.⁸⁰ At that time, the U.S. military already had plans to "organize, train, and equip" the Korean army and navy.⁸¹ By November 1945, American troops in South Korea had already completed the "Koreanization" of the judiciary.⁸² In other words, the judiciary, run by the Japanese, was used as it customarily was by Koreans.

In the fall of 1946, workers in Daegu went on strike and started a riot because they did not have enough rice.⁸³ Cho Byeong-ok (Pyung-ok), the head of the U.S. Military Government National Police Department, had to use the Japanese Criminal Code of 1912 to preemptively arrest those who might resist the U.S. military government.⁸⁴ At that time, the South Korean police was a very effective force that had been thoroughly Japanized.⁸⁵ By mid-1946, South Korean police force was operating "thirty-nine radio stations and 22,700 kilometers of telephone lines."⁸⁶ Cho Byeong-ok, the Minister of the Police Department, said that Hodge thought that only the police could dismantle the People's Republic of Korea and the People's Committees that operated throughout South Korea.⁸⁷ In January 1947, the U.S. designated the 38th parallel as the "line of blockade."⁸⁸ The U.S. believed that if Communist China formed an alliance with the Soviet Union, while the Soviet Union successfully developed nuclear weapons, all communist forces, including those of the Soviet Union and China, would have to be confined to the edge of Eurasia.⁸⁹

III. THE TRUTH TO BE RECOGNIZED

In late 1947, General Hodge told a U.S. congressman visiting South Korea, that the U.S. military felt obligated to utilize pro-Japanese police to eradicate communism. Hodge remarked:

We always have the danger of Fascism taking over when you try to fight Communism. It is a very difficult political situation that we run into. Germany was built up by Hitler to fight Communism, and it went to

80. CUMINGS, *supra* note 67, at 196.

81. *Id.*

82. CUMINGS, *supra* note 30, at 158.

83. *See id.* at 356.

84. *Id.* at 160.

85. *See id.* at 162-63.

86. *Id.* at 164.

87. *Id.* at 162.

88. *See id.* at 120.

89. *See* I. F. STONE, *THE HIDDEN HISTORY OF THE KOREAN WAR, 1950-1951*, at 31 (1952).

Nazism. Spain the same thing. On the other hand, when the Communists build up—when Communism builds up—democracy is crushed, and the nation goes Communist. Now, what is the answer on the thing? How in the dickens are you going to get political-in-the-middle-of-the-road out of the mess. Just bring[ing] it up for discussion. I don't know the answer. I wish I did.⁹⁰

During the early stage of liberation, the USAMGIK “rehired many pro-Japanese police officers who had betrayed their own nation” in order to deter communist threats.⁹¹ And compared to the Japanese Colonial Rule time, the number was more than double.⁹² Consequently, pro-Japanese police impersonated pro-American anti-communist police officers.⁹³ Thus, these policemen created criminals to show their loyalty to the U.S. military.⁹⁴ In June 1945, a total of 16,587 Koreans were imprisoned under the Japanese Imperialist Rule.⁹⁵ In 1946, in South Korea alone, over 17,363 people were imprisoned, most of them being political prisoners.⁹⁶

In August 1946, an opinion poll of 8,453 people was conducted by the U.S. military government.⁹⁷ Seventy one percent of respondents supported the unification of South and North Korea as a condition for establishing a government.⁹⁸ And while seventy percent preferred socialism and seven percent preferred communism, only fourteen percent preferred capitalism, with eight percent remaining neutral.⁹⁹ The U.S. military government focused on removing and oppressing the seventy seven percent of respondents who supported and advocated for socialist or communist systems of government.¹⁰⁰

As such, “American imperialism divided the Korean Peninsula to maintain military bases in South Korea.”¹⁰¹ The U.S. has achieved its military and political goal of stationing troops on the Korean Peninsula for its own benefit.¹⁰² It had to eliminate not only socialist, communist,

90. CUMINGS, *supra* note 67, at 194.

91. YUNJONG KIM, *THE FAILURE OF SOCIALISM IN SOUTH KOREA: 1945-2007*, at 66 n.46 (2016).

92. CUMINGS, *supra* note 30, at 166.

93. *See id.* at 166-67.

94. *See id.* at 166-67, 188.

95. *Id.* at 188.

96. *Id.*

97. GEORGE KATSIAFICAS, *ASIA'S UNKNOWN UPRISINGS VOLUME 1: SOUTH KOREAN SOCIAL MOVEMENTS IN THE 20TH CENTURY* 67 (2012).

98. *Id.*

99. *Id.*

100. *See* HART-LANDSBERG, *supra* note 39, at 12, 18, 175.

101. *See* ROBERT TARBELL OLIVER, *WHY WAR CAME IN KOREA* 6 (1950).

102. *See* HART-LANDSBERG, *supra* note 39, at 18.

anarchist, and independence activists, but also those who were likely to oppose the U.S. military presence on the Korean Peninsula.¹⁰³

The Truman Doctrine, issued on March 12, 1947,¹⁰⁴ framed the doctrine as part of a conflict between “democracy” and “totalitarianism,” and Acheson played a significant role in President Truman’s remarks.¹⁰⁵ National Security Council Paper Number 68 (NSC-68) further simplified this distinction by referencing “the ‘free’ and the ‘slave’ worlds.”¹⁰⁶

All policies carried out by the U.S. military on the Korean Peninsula required the consent of the State-War-Navy Coordination Committee (SWNCC).¹⁰⁷ Things determined to be of importance required the approval of the U.S. representative of the Far Eastern Commission.¹⁰⁸ Additionally, Hodge had to get the approval of MacArthur and his staff.¹⁰⁹ Before August 8, 1945, MacArthur was given complete control of South Korea.¹¹⁰ However, he did not set foot on his fiefdom for an additional year.¹¹¹

MacArthur issued General Order No. 1 of September 7, 1945,¹¹² which stated that “All powers of Government over the territory of Korea south of 38° north latitude and the people thereof will be for the present exercised under my authority.”¹¹³ On military matters, Lieutenant General Hodge was required to obtain approval from MacArthur’s command and the Joint Chiefs of Staff.¹¹⁴ Hodge had a unique American instinct to hate anything that resembled communism.¹¹⁵ Despite Hodge’s deep hatred and distrust for Syngman Rhee, he supported Rhee because of his “pragmatic anticommunism.”¹¹⁶

103. *See id.* at 12, 18, 175.

104. *See* TRUMAN DOCTRINE (1947), NAT’L ARCHIVES (Feb. 8, 2022), <https://www.archives.gov/milestone-documents/truman-doctrine> [<https://perma.cc/CFA5-6WCZ>].

105. *See* GADDIS, *supra* note 29, at 106.

106. *Id.*

107. *See* Hugh Borton, *United States Occupation Policies in Japan Since Surrender*, 62 POL. SCI. Q. 250, 250-52 (1947).

108. *See* U.S. CONG. HOUSE. COMM. ON FOREIGN AFFS., BACKGROUND INFORMATION ON KOREA: REPORT OF THE COMMITTEE ON FOREIGN AFFAIRS PURSUANT TO H. RES. 206, at 4 (1950) [hereinafter U.S. CONG. HOUSE COMM. ON FOREIGN AFFS.].

109. *See* James I. Matray, *Hodge Podge: American Occupation Policy in Korea, 1945-1948*, 19 KOREAN STUD. 17, 18 (1995).

110. *See* YAMAMOTO, *supra* note 4, at 99.

111. *See* CUMINGS, *supra* note 30, at 233.

112. U.S. CONG. HOUSE COMM. ON FOREIGN AFFS., *supra* note 107, at 2.

113. *Id.* at 4.

114. *See id.* at 2, 56.

115. *See* CUMINGS, *supra* note 67, at 213.

116. *Id.*

While performing their assigned duties in South Korea, Hodge and other members of the U.S. military repeatedly acted contrary to their discretion and military necessity.¹¹⁷ The disturbance that erupted in the Cheju-do region and the systematic recurrence of international law violations serve as a representative examples.¹¹⁸ During the trials held under the U.S. military government from September 1945 to August 1948, Jeju residents were stripped of their rights under the principles and standards of international human rights and other applicable international laws. From December 1948 to June 1949, the military court held hearings where martial law did not exist, and the principles of presumption of innocence, legality, and the right to a fair trial were denied.¹¹⁹

In April 1948, the U.S. military dispatched Major General Orlando Ward, commanding the 6th Infantry Division, to the Cheju region to direct the operation. USAMGIK appointed Colonel Brown, the leader of the 20th Regiment of the 6th Division, as the commander of the Cheju Island subjugation corps and sent him into the field to carry out the scorched earth operation.¹²⁰ The U.S. military did not comply with any international human rights law during any of the multiple processes that comprised the Cheju Massacres.¹²¹

In the wake of the civilians' massacre, the legal issue is discovering the governing law or principle guiding victim compensation. The U.S. violated two important principles of customary international humanitarian law. First, it violated the principle of distinction, which is intended to differentiate between military targets and unarmed individuals or civilian installations (Rules of customary international law 7, 11, 12, 13, and so forth).¹²² Rule 7 states that parties to a conflict must always distinguish between civilian installations and military targets.¹²³ As such, attacks should be aimed only at

117. *See id.* at 219, 222-24.

118. *See id.*

119. *See* Kim Tae-young, *Scars of Jeju Island: The Jeju 43 Uprising and Massacre*, THE ARGUS (Aug. 4, 2019), <https://www.theargus.org/news/articleView.html?idxno=1535> [<https://perma.cc/2S6X-B4MM>].

120. *See* Jeong-Sim Yang, *The Jeju 4.3 Uprising and the United States: Remembering Responsibility for the Massacre*, 4 S/N KOREAN HUMAN. 39, 53-54, 63 (2018); *see also* YAMAMOTO, *supra* note 4, at 113.

121. *See* Sang-Soo Hur, *US Responsibilities of Cheju Massacres 1947-1949 Revisited*, 8 WORLD ENV'T & ISLAND STUD. 193, 204 (2018) [hereinafter Hur, *US Responsibilities of Cheju Massacres*]; *see also* Hur, *Ten Points on U.S. Responsibilities in the Jeju Massacres*, *supra* note 5, at 24-40.

122. *Id.* at 203; *see generally* JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOLUME 1: RULES (2005) (exploring the laws of war 7, 11, 12, 13, and so forth).

123. HENCKAERTS & DOSWALD-BECK, *supra* note 122, at 25.

military targets and must not be directed at civilian objects.¹²⁴ Rule 11 prohibits the use of indiscriminate attacks.¹²⁵ Second, the U.S. violated the principle of proportionality, which seeks to minimize civilian casualties by maintaining proportionality between the expected military benefit and the civilian damage caused by an attack on a military target (Rules 14, 18, 19).¹²⁶ Rule 14 prohibits launching an attack that is “expected to cause incidental loss of civilian life, injury to civilians, injury to civilian objects, or a combination thereof.”¹²⁷ Initiating an attack is prohibited under the principle of proportionality.¹²⁸

IV. RECOMMENDATIONS AND CONCLUSIONS

When it heard that President Roosevelt was planning to implement trusteeship as a policy on the Korean Peninsula after the war, the Provisional Government of the Republic of Korea in China became concerned. As such, when Japan attacked Pearl Harbor and the U.S. declared war on Japan, the Korean Provisional Government and Liberation Army contacted the U.S. Army Force in China, received weapons from the U.S., conducted military drills, and planned the Eagle Project with the U.S. military to land on Cheju Island and the Korean Peninsula.¹²⁹ However, all operations were canceled because the U.S. dropped the atomic bombs on the Japan and the Japanese emperor surrendered.¹³⁰ The U.S. military forces occupied South Korea and Cheju Island in September 1945. “The Korean Government was in the position of an incompetent defective not yet committed to guardianship. The U.S. was her only disinterested friend—but had no intention of becoming her guardian.”¹³¹ In the twentieth century, with the outbreak of the Pacific War, the U.S. won World War II and its policy on the Korean Peninsula became

124. *Id.*

125. *Id.* at 37.

126. See Hur, *US Responsibilities of Cheju Massacres*, *supra* note 121, at 203-04; see also HENCKAERTS & DOSWALD-BECK, *supra* note 122, at 46, 58, 60 (covering the rules of war 14, 18, 19, 13).

127. HENCKAERTS & DOSWALD-BECK, *supra* note 122, at 46-47.

128. *Id.* at 47.

129. See Kwon Hyuk-chul, *Document Showing KLA's Efforts to Join Forces with US During WWII Uncovered*, HANKYOREH (Jan. 13, 2022), https://english.hani.co.kr/arti/english_edition/e_national/1027221.html [https://perma.cc/KWT5-84MT].

130. See Jasmine Owens, *Japan's Surrender*, OUTRIDER (July 15, 2020), <https://outrider.org/nuclear-weapons/articles/japans-surrender> [https://perma.cc/E73J-MV65].

131. TYLER DENNETT, *AMERICANS IN EASTERN ASIA: A CRITICAL STUDY OF THE POLICY OF THE UNITED STATES WITH REFERENCE TO CHINA, JAPAN AND KOREA IN THE 19TH CENTURY* 495 (1922).

more apparent in the post-war period. President Roosevelt's concept of trusteeship, the U.S. Army Force's occupation of South Korea, the U.S. and U.S.S.R division, the Cold War, left-right cooperation, etc., were all the result of a proactive attitude. The U.S. military force indirectly ruled Japan, an enemy country, and pursued a reverse course to create an alliance, but it directly ruled South Korea, a colony to be protected and a war-victim country, and it established brutal dominance and control over it as if it were a territorial annexation nation.

At that time, the national identity of the U.S. was two-sided. One is characterized by a positive identity that promotes democracy and guarantees freedom of religion, while the other conceals a dark identity that subjugates another sovereign country to the American national interest. General Hodge and the U.S. military government supported and protected anti-communist political groups in South Korea to build an anticommunist fortress. However, those who opposed the establishment of an anticommunist separate government were considered communists and too many resources were expended to drive them out of society, exclude them, discriminate against them, and crush them.

Priority must be given to determining the nature of the U.S.'s military action on the Cheju Island. We must investigate what actions the Americans took during the Cheju Massacres, as well as whether they omitted, neglected, abandoned, or assisted the actions they did not take themselves. It is difficult for the U.S. Government and its Army to deny or remain silent regarding their participation and responsibility for the Cheju Massacres, which took place from March 1, 1947, to September 21, 1954, commencing with the Gwandeokjeong Massacre.¹³² Together with the Korean Government, the U.S. Government must investigate the undeniable facts and identify the truths that must be acknowledged. The social healing through justice for the Cheju Massacres must be initiated as soon as possible. Only by finding such a way can the U.S. return to being a civilized society. I believe that Yamamoto's approach provides the blueprint for reviving the U.S. as a civilized nation.

I would like to emphasize once again that it is more reasonable and realistic to attempt a groundbreaking and practical approach to social healing through justice, as suggested by Professor Yamamoto, rather than applying international human rights and humanitarian laws to Americans' actions on Jeju Island and the Korean Peninsula in the peace and war time, 1947 to 1954.

132. The Gwandeokjeong Massacre was caused by shooting without any warning by national police dispatched from the mainland under the USAMGIK and led to a tragedy in which six people were killed and six others were injured on March 1, 1947, at the Gwandeokjeong Pavilion Square, the center of the Jeju city. See Hur, *US Responsibilities of Cheju Massacres*, *supra* note 121, at 194, 196-97.