

Reassessing the Tokyo war crimes trial

Richard Nottage reviews a recent book on the post-war trial of Japanese leaders.

For 60 years the International Military Tribunal (IMT) for the Far East (Tokyo War Crimes Trial), held during 1946–48, has been relatively unstudied, especially in comparison with its European counterpart, the Nuremberg trials. There are several reasons. First, the extensive literature about the trial in Japanese is not well known outside Japan. Secondly, there is a degree of Euro-centrism in the scholarship on international criminal law. Thirdly, and uncomfortably for the Western powers, one judge — Pal of India — condemned atrocities by the Allies, especially the use of the atomic bomb. This dissension distinguished the Tokyo tribunal from Nuremberg, which allocated blame exclusively to the Axis powers.

Given this lacuna in the literature on international criminal law and on the Tokyo tribunal generally, a short explanation of the main aspects of the trial may assist the general reader. It cannot be understood without some knowledge of the domestic politics and constitutional arrangements in pre-war Japan and their impact on Japan's foreign relations from the 1920s: especially its expansion into Manchuria and China through the 1930s, Indo-China in 1941 and, after Pearl Harbor, into Malaya, Singapore, the Philippines, Indonesia and elsewhere in the Pacific. Atomic bombs were dropped on Hiroshima and Nagasaki on 6 and 9 August 1945 respectively. Russia declared war on Japan on 8 August and took over Manchuria. Japan surrendered on 15 August 1945, leading to the transformative occupation of Japan under a new constitution.

The legal foundations for punishing Japanese aggression took on a tangible form when the leaders of the United States, China and Great Britain adopted the Potsdam Declaration of 26 July 1945, later adhered to by the Soviet Union. This provided for the punishment of Japanese 'war criminals', but not expressly for the establishment of an international criminal tribunal, nor for the prosecution of crimes against peace. These came six months later through 'a time-fractured procedure by which General MacArthur, Supreme Commander for the Allied Powers, promulgated the Tokyo International Military Tribunal's Charter'. Initially by a Special Proclamation on 19 January 1946, he established an 'International Military Tribunal for the Far East' for the purpose of 'the trial of persons charged individually or as members of organisations or in both capacities with offences which include crimes against peace, war crimes and crimes against humanity'.

The tribunal's charter provided for the constitution, powers and procedures of the tribunal itself, based largely on the Nuremberg charter. The bench consisted of eleven members nominated by the respective Allied powers: the United States, Soviet Union, United Kingdom, China, France, the Netherlands, Canada, Australia, New Zealand, India and the Philippines.

THE TOKYO INTERNATIONAL MILITARY TRIBUNAL: A Reappraisal

Authors: Neil Boister and Robert Cryer

Published by: Oxford University Press, New York, 2008, 358pp, £63.50.



Problematic choice

The selection of the 28 defendants was a problematic aspect of the tribunal's preparatory work. Boister and Cryer's view is that the selection was too broad, as Japanese officials were charged merely by virtue of their position without reference to the nature or extent of their individual involvement in the war effort. But it was also insufficiently broad, as many prominent Japanese military, political and industry figures, including the Emperor, as well as individuals who had engaged in biological and chemical warfare, were not charged.

The indictment, drawn from the authority of the Potsdam Declaration, Japan's Instrument of Surrender and the Tokyo charter, was not well managed and over-ambitious. It revealed the prosecution's basic conspiracy thesis that Japan, dominated by a militaristic, racist clique, sought, with Germany and Italy, to dominate the world. Hundreds of individual charges were laid, many duplicatory, for crimes against peace and humanity and for murder.

At the time, 1948, sentencing practices were undeveloped and the tribunal had minimal guidance from its charter. Of the accused, seven were sentenced to death, sixteen to life imprisonment, one to 20 years and one to seven years' imprisonment. In 1958 the surviving parolees were released unconditionally.

The aim of this book is 'to provide a legal analysis of the Tribunal, in the hope that it will help renew interest in the Tokyo International Military Tribunal and thus contribute to a fuller understanding of international criminal law'. In my view it fulfils this objective. But it serves also a wider purpose. It draws attention to a voluminous and unique body of documentation of great historical importance, which

sheds much light on Japan's domestic politics 1928–45 and on its external relations in the Asia–Pacific region, especially with China, and globally.

Two limitations

In their introduction the authors note two limitations of their work. First, that they are lawyers — Neil Boister is professor of law at Canterbury University — not historians, and that ‘the history and conduct of Japan in the run-up to and during World War II is highly controversial’. They do not enter substantively these controversies. Their ‘reappraisal’ of the tribunal is not in the sense of denying its flaws, but rather what it ‘can teach us about the pitfalls of prosecuting international crimes’. In this regard the authors observe, for example, that ‘in many ways the Milosevic trial closely echoes’ the Tokyo trial and that ‘extraordinary parallels’ can be drawn between them. Moreover, the similarities of the critiques they have inspired might have been avoided if the International Criminal Tribunal for the Former Yugoslavia ‘had looked back with curiosity to the Tokyo IMT’.

The second limitation is that neither of the authors speaks or reads Japanese. They therefore have had to rely on others to assess the large literature in Japanese on the Tokyo IMT.

For my part, I am not a lawyer or student of international criminal law, so must leave it to others to review the book from this perspective. Suffice to say here that the chapter headings are well chosen and their content set out in well-defined sub-sections. The book deserves a wide readership, especially amongst students of law and history. Anybody with an interest in international affairs will find it readable and informative.

In Chapter 11, ‘The Functions and Legacies of the Tokyo IMT’, the authors write: ‘One of the purposes of the trial was to lay down the history of the Asia–Pacific War for future generations’. Further on, they observe that ‘an often overlooked aspect of the Tokyo IMT’s proceedings and their contribution to history is their record of evidence heard, rather than the judgements themselves: “The most enduring legacy of the tribunal may be this treasure trove of documentation.”’

Important source

In 1962 as a Charles Upham scholar at Canterbury University I wanted to write a thesis towards an MA (Hons) on some aspect of the Pacific War. The professor of history, Neville Phillips, suggested to me the IMTFE papers might provide a basis for this. After the Tokyo trial ended, the New Zealand representative on the tribunal, Justice Erima Harvey Northcroft, donated his nearly complete set of trial documents to the then Canterbury University College. In a letter of 27 January 1949 to the chairman of the Canterbury University College Council, conveying his bequest, Justice Northcroft wrote: ‘these [records of the trial] are not likely to be of value or interest to ordinary degree students, but may be of assistance to research students both in International Law and, more particularly, in History’. The bequest, one of the most complete sets of IMTFE documents in the world, contains 380 volumes and 110,000 pages. In 1962 it was housed in several rooms of the old, then unused, Ilam homestead, which is now the university staff club.

The late Professor S.A.M. Adshead, who had arrived

recently from the UK to take up a lectureship in history, was assigned as my thesis tutor. C.W. Collins, Librarian, made the papers available and gave us keys to the homestead. Sam Adshead devoted weeks of his own time assembling the tribunal papers into an orderly form, and provided me with much valuable guidance and advice as I wrestled with a thesis entitled ‘China and Japanese Politics 1934–39’. I spent several months in 1962 alone in the grand old mansion, and was probably the first student or staff member to utilise this unique archive.

Subsequently, in 1963–65, I used the UK set of IMTFE documents while a post-graduate scholar at Oxford University, where my thesis on the establishment of Japanese puppet governments in China (1935–40) was supervised by the late Professor Richard Storry. At that time little was known or written about the various ultimately unsuccessful attempts by local Japanese armies in China to establish puppet regimes there. Japan’s political failure in China was a major cause of the Pacific War.

Re-discovered collection

The Northcroft Collection was ‘re-discovered’ in 2005 by the manager of the Macmillan Brown Library, Jill Durney, and Jeff Palmer, the library archivist. They recognised its significance. It was inscribed recently on the Regional (Asia/Pacific) Register of UNESCO’s Memory of the World Programme, the first item from New Zealand to receive such recognition and a testament to the enormous value of the collection. Also, it has been identified as Canterbury University’s most urgent e-heritage project for archival scanning and full text digitisation. This will be of immense benefit for scholars and others in New Zealand, the Asia–Pacific region and beyond, as they seek to understand the on-going historical debates and the divisions and ambiguities in Japan about its culpability in the war. The link to the collection is: <http://library.canterbury.ac/mb/warcrimes/toc.shtml>.

There is a small selection of IMTFE and relevant papers in *Documents on New Zealand’s External Relations, Vol. II, The Surrender and Occupation of Japan*, edited by Robin Kay and published by the Historical Publications Branch of the Department of Internal Affairs in 1982. Of particular interest amongst these is a paper assessing the Tokyo tribunal dated 8 April 1949, written by the late Professor Quentin Quentin-Baxter, assistant to Justice Northcroft at the Tokyo trial. This is a more succinct version of the lengthy report Northcroft sent to the prime minister in March 1949, in which, amongst other things, he advocated the establishment of a permanent international criminal court. Quentin-Baxter wrote:

It is, therefore, one of the most important results achieved by setting up the Tokyo Tribunal that it conducted an historical enquiry into the actions of Japan and ascertained the proximate causes of those actions. There is set upon its findings a seal of authority and impartiality which cannot attend the work of any historian of recent events; for the Tribunal’s decision was reached upon all the available evidence and after the fullest opportunity had been afforded for the presentation of opposing views.

Readers of *The Tokyo International Tribunal: A Reappraisal* will be able to come to their own judgments. 