Introduction

"What kind of justice did the Tokyo War Crimes Tribunal render, victor's justice, or humanity's justice?" This question was posed to several dozen legal scholars, historians, military officers, and other professionals who gathered in November 2008 at the Melbourne Law School for a three-day international conference commemorating the sixtieth anniversary of the Judgment of the Tokyo Tribunal (hereafter referred to as the "Tokyo Judgment" or "the Judgment").[1] The Tokyo Tribunal – or the International Military Tribunal for the Far East (IMTFE) as it was officially known – was established by the Allied Powers as the eastern counterpart of the International Military Tribunal at Nuremberg. Vilified as victor's justice by its critics in Japan, or otherwise overshadowed by Nuremberg and largely forgotten by the rest of the world, the trial held before IMTFE (referred to as the "Tokyo Trial" hereafter) came to attain a new level of significance in the 1990s when the member states of the United Nations resuscitated the long-defunct international criminal justice system in order to have it play a central role in combating genocide, war crimes, crimes against humanity, and other international offenses occurring in the world today. Conference participants, this author included, ruminated over the striking parallel between past and present international criminal trials while also trying to find an answer to the foregoing question. It became increasingly clear, however, that even though a great deal of research has been done to date, our knowledge of the Tokyo Trial is still limited to reach a definitive assessment. The conference nonetheless served as a timely forum to consider afresh the significance of the trial and determine the future directions of war crimes studies.

Inspired partly by the Melbourne conference, this book explores a cross section of war crimes trials that the Allied Powers held in the Asia-Pacific region in the aftermath of World War II. This author's first book, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Totani 2008), focused on a single criminal proceeding, while this volume casts a

wider net and explores several trials. There are two reasons for setting a broad analytical framework. First, despite its designation as the centerpiece of the Allied war crimes program in this region, the Tokyo Trial played a somewhat constricted role in documenting Japanese-perpetrated atrocities or, for that matter, in identifying and punishing the responsible individuals. This was due to the Allied Powers' intergovernmental policy at the highest level that following the example at Nuremberg, the Tokyo Tribunal should serve as a venue primarily to receive evidence concerning the Japanese planning and waging of aggressive war (the type of international offense then known as "crimes against peace") and secondarily to receive evidence of atrocities. In so planning, the Allied Powers aimed at securing a second ruling from an international tribunal – following Nuremberg, that is – that aggressive war constituted an international offense and that there was individual criminal

FIGURE 1. Suspected war criminals being photographed by an official photographer for the British Intelligence Branch, at Stanley Jail in British Hong Kong. © Imperial War Museums (SE 6510).

liability for those who planned and carried it out. As for the task of prosecuting and meting out punishment to those individuals who were responsible for the commission of atrocities, that was left mostly with fifty-one special war crimes courts that the Allied Powers concurrently operated across the formerly Japanese-occupied territories in the region (Figure 1). Given this type of division of labor, it is important that the latter trials come under scrutiny side by side with the Tokyo Trial.

Second, the Allied prosecutors at the Tokyo Trial did bring charges of atrocity against major Japanese war criminals notwithstanding the highest-level policy constraints. Their effort, however, met several obstacles, the notable

FIGURE 2. Exhumation of bodies of the Allied troops in the Singapore area. Capt. R. S. Ross of the Royal Army Medical Corps "examines a piece of cloth which looked as if it had been used to bandage the eyes." © Imperial War Museums (SE 6153).

ones being (1) chronic shortage of staff and resources when it came to investigating and collecting evidence of atrocities; (2) pressure to expedite the trial even if that meant shortening the time to present evidence on the charges of war crimes; and (3) postwar cover-up efforts by the Japanese government and military authorities. The former two obstacles stemmed from the structural constraints that are already pointed out, namely, the Allied Powers' intergovernmental policy that crimes against peace be the prosecutorial priority at Tokyo while charges related to atrocities be secondary. As for the third obstacle, it refers to attempts by the Japanese government authorities as well as individual army and navy units in theaters of war to destroy physical and documentary evidence of atrocities prior to the arrival of Allied war crimes investigators (Figure 2). It took months, if not years, for investigators to grasp the scope of Japanese obstructionism, uncover false stories, and track down war crimes suspects. The fruits of long and arduous investigations became available to the prosecutors at Tokyo only in part. The Tokyo Tribunal did make important legal and factual findings on charges of war crimes. If one is to have a full appreciation of the dynamic of the Far Eastern war crimes prosecution, however, it is vital to look beyond the Tokyo Trial and examine the Allied war crimes program as a whole.

As it explores the records of Allied war crimes trials with the foregoing theoretical considerations, this book pursues the following two specific research goals. First, it aims at bringing to light a large body of relatively underutilized oral and documentary history of World War II contained in the trial records. Sources in the trial records include affidavits, depositions, and sworn statements taken from the former members of the Japanese armed forces, Allied prisoners of war, civilian internees, and other noninterned civilians in Japanese-occupied territories; war crimes investigation reports produced by the Allied authorities as well as the postwar Government of Japan; Japanese army and navy military orders, directives, instructions, rules and regulations, and other operational and administrative records; and oral evidence taken directly from numerous Japanese and Allied witnesses in the courtroom, including from the accused themselves. This rich trove reveals firsthand accounts of the war as told in its immediate aftermath by the war victims, perpetrators of atrocities, eyewitnesses, and war crimes investigators. The analysis of these sources, in turn, will make it possible to produce a history of the Pacific War that pays close attention to the nexus of the operational aspects of the war and the occurrence of war crimes. There are innumerable publications to date that offer in-depth analyses of grand strategies, military operations, and military technologies.[2] Similarly, WWII-related publications are suffused with memoirs, diaries, and other personal accounts that elucidate personal experiences of combat missions, internment, Japanese military rule, resistance movements, and life at the home front. What this book will attempt is to focus on the intersection of these varied facets of the war in its endeavor to produce an interdisciplinary and integrative narrative history of the Pacific

War.[3] (There is controversy in the existing scholarship about the adequate definition and usage of the term, the Pacific War. This book will use the term when referring to the Far Eastern war that began with the Japanese invasion of American and British territories in the Pacific region on December 7, 1941. This Pacific War includes the war in the China-Burma-India (CBI) theater, but not necessarily the Sino-Japanese War that preceded the December 1941 attacks. When referring to the war that subsumes the Manchurian Incident of September 1931 and the Marco Polo Bridge Incident of July 1937, the term, the "Asia-Pacific War," will be used instead.)

Second, this book carries out a systematic analysis of the trial records with the view to bring out the Allied courts' findings on criminal liability of individuals accused of war crimes. This book is particularly interested in exploring cases against those persons who had held positions of authority in the wartime Government of Japan, the Imperial Japanese Army, and the Imperial Japanese Navy. How could a high-ranking government official or a military commander be held criminally accountable for occurrence of general and specific instances of atrocity? What methods of proof applied when the Allied prosecutors had little or no direct evidence of the accused's issuance of criminal orders or criminal knowledge? How did the doctrine of command responsibility, first introduced at the famous Yamashita Trial (1945) and subsequently applied broadly at other Allied courts, help the prosecution, the defense, and the judges resolve these knotty issues? By posing these questions, this book sheds light on the Allied courts' complex, and at times contradictory, findings on theories of criminal orders and knowledge, the Japanese system of command and control, organizational versus individual responsibility, and guilt or innocence of accused persons. A close inquiry into the jurisprudential legacy of the Allied war crimes trials will enable one to begin developing useful conceptual tools with which to tackle issues of Japanese institutional and individual responsibility for WWII-era mass atrocities.

This book is not the first to make an inquiry into the Allied Pacific-area war crimes trials. While publications are many, Philip Piccigallo's (1979) *The Japanese on Trial: Allied War Crimes Operations in the East, 1945–1951* deserves recognition as a pioneer English-language monograph that offers a comprehensive account of the Allied war crimes trials in this region. *The Japanese on Trial* continues to be key reference material to this day. But one shortcoming is that, in producing this monograph, Piccigallo had to rely heavily on secondary sources such as newspapers and law reports in lieu of the trial records themselves, due to limited access to the latter type of sources. From the standpoint of empirical research using the actual trial records, a landmark publication from early years is A. Frank Reel's (1949) *The Case of General Yamashita*. Reel analyzes the first of the war crimes trials that the U.S. Army held in the Asia-Pacific region. The accused was Gen. Yamashita Tomoyuki, the last general to command the Japanese armed forces in the occupied Philippines. (This case will be explored in Chapter 1.) Reel served as a member of the defense

team representing the accused. Utilizing both his firsthand knowledge of the trial and the official transcripts of the court proceedings, he produced a well-grounded, analytically rigorous account of the Yamashita Trial. A pathbreaking piece that has advanced the study of war crimes trials in recent years is David Cohen's (1999) "Beyond Nuremberg: Individual Responsibility for War Crimes." This article is the first to make a systematic inquiry into the jurisprudential legacy of post-WWII Allied war crimes trials, with an emphasis on the Far Eastern cases. Informed by Cohen's unique expertise in law and history, this article offers a comparative study of the Nuremberg Trials, the Tokyo Trial, and the Yamashita Trial, thereby shedding new light on complex judicial opinions of the Allied courts regarding individual criminal liability of state and military leaders for WWII-era war crimes.[4]

The study of post-WWII Pacific-area war crimes trials has expanded dramatically in the last decade, especially in the field of law in English-language academia. This reflects growing interest among legal scholars today in researching historical trials to determine their significance in the subsequent development of international criminal law. One drawback of the recent research trend is that it has the tendency to fall within the confines of discipline-specific, nation-centric frameworks. It can also be weak in narrative integrity in the case of joint authorship. Two of the latest developments in the field help illustrate the point.

Hong Kong's War Crimes Trials, edited by Suzannah Linton (2013), is arguably the first in English-language scholarship to offer a comprehensive assessment of a series of Allied war crimes trials held at one location and to do so in an interdisciplinary manner. But a close look at the volume reveals that its contents are actually quite segmented due to multiple authors writing on discrete and often highly technical matters. No particular overarching theme exists to connect individual chapters, other than the mere fact that all the cases analyzed for the volume come from the U.K. Hong Kong trials. The interdisciplinary appearance of the volume is skin deep, too, as most contributors are scholars of law with limited background in the history of modern Asia or limited proficiency in relevant Asian languages. These features of the volume narrow the intended readership to legal scholars and practicing lawyers. *Australia's War Crimes Trials, 1945–51*, edited by Georgina Fitzpatrick, Timothy L. H. McCormack, and Narrelle Morris (in press), is comparable to *Hong Kong's War Crimes Trials*, but this volume deals with the entirety of the Australian war crimes trials instead of a trial group at one location only. This publication is designed as a thematic volume to accompany Narrelle Morris and Timothy L. H. McCormack (eds.), *The Australian War Crimes Trials Law Reports Series, 1945–51* (forthcoming). Owing to multiple years of teamwork among the core members, this volume has a far more comprehensive and better-integrated coverage of key themes as well as the right balancing of law and history. It is worth noting that some volume contributors have proficiency in the Japanese language, about a third of the volume contributors

are historians with varying expertise in the Pacific War, and the remainder are scholars of law. That said, the fact remains that the nation-centric approach is the defining feature of the volume. This has the effect of placing Australia's national war crimes agenda in the front and center while sidelining the inter-Allied dimensions of the Australian war crimes program (such as Australia's close working relationships with American, British, Chinese, Dutch, and French authorities in war crimes policy formation, investigation, and trials) or overlooking legal, historical, and jurisprudential issues that grow out of war crimes trials beyond national boundaries (e.g., the emergence of case-law literature on command responsibility across the region).

The nation-by-nation approach is commonplace in Japan, too, but the scope of analysis, disciplinary emphasis, and narrative goals are different because of the far-richer tradition of war crimes studies on which the Japanese-language scholarship stands. Iwakawa Takashi's (1995) *Kotō no tsuchi to narutomo: BC-kyū senpan saiban* (Even if to become the soil of an isolated island: Class BC war crimes trials) and Hayashi Hirofumi's (2005) *BC-kyū senpan saiban* (Class BC war crimes trials) are two of the many foundational texts that define the Japanese-language scholarship on the Far Eastern war crimes trials today. These authors have analyzed the trial records by country as a practical way to organize vast archival materials at their disposal and to tell the complex history of the Allied war crimes program in a manner accessible to general readers. Hayashi Hirofumi's (1998) *Sabakareta sensō hanzai: Igirisu no tai-Nichi senpan saiban* (War crimes tried: The British war crimes trials against the Japanese) and Nagai Hitoshi's (2010) *Firipin to tai-Nichi senpan saiban, 1945–1953* (The Philippines and war crimes trials against the Japanese, 1945–1953) similarly adopt the nation-based approach as the main organizing principle in reconstructing the history of British and Philippine national war crimes programs, respectively. The Yokohama Bar Association's (2004) *Hōtei no seijōki: BC-kyū senpan Yokohama saiban no kiroku* (The Stars and Stripes in the courtroom: Records of Class BC war crimes trials at Yokohama) is somewhat of an anomaly, as its primary emphasis is not so much reconstructing the history of the Allied war crimes trials as probing thematically into an array of legal questions that arose from the U.S. Yokohama trials. The methodology adopted in *Hōtei no seijōki* is comparable to *Hong Kong's War Crimes Trials* and *The Australian War Crimes Trials, 1945–1951*, but one notable difference is the use of a single narrative voice in place of multiple authors speaking separately on topics of varied disciplines and focuses.

The Allied Powers formally assumed the power to try Far Eastern war criminals by signing the Instrument of Surrender on *USS Missouri* at Tokyo Bay on September 2, 1945. The surrender document required Japan to "accept the provisions set forth in the declaration issued by the Heads of the Governments of the United States, China and Great Britain on 26 July 1945 at Potsdam, and subsequently adhered to by the Union of Soviet Socialist Republics," and "to carry out the provisions of the Potsdam Declaration in good faith, and to

issue whatever orders and take whatever actions may be required . . . for the purpose of giving effect to that Declaration."[5] The said declaration included the following provision:

> We [The Allied Powers] do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners.[6]

Pursuant to this part of the surrender terms, nine nations that were represented at the surrender ceremony (Australia, Britain, Canada, France, the Netherlands, New Zealand, the Republic of China, the Soviet Union, and the United States) and two Asian nations that were about to gain independence (India and the Philippines) jointly established the IMTFE in the capital city of Japan.[7] Each of eleven participating nations supplied a judge and a prosecution team, and the Australian member, Sir William F. Webb, served as presiding judge of the Tribunal. The United States took on the additional burden of supplying court staff and about two dozen American attorneys to work with the Japanese defense counsel. A single joint trial against twenty-eight major Japanese war criminals (subsequently reduced to twenty-five due to two deaths and one case of mental unfitness to stand trial) was held between May 1946 and November 1948.

While less known, the occupation authorities established two other international military tribunals in Tokyo in late 1948 in order to hear additional cases against major Japanese war criminals still in their custody. The accused were Lt. Gen. Tamura Hiroshi and Adm. Toyoda Soemu, former high-ranking army and navy officers, respectively. The Legal Section of the occupation authorities originally planned to hold three additional trials subsequent to the Tokyo Trial, whose accused were to be (1) Tamura, (2) Toyoda, and (3) several members of the Japanese war cabinet during the Pacific War. The Legal Section ultimately decided against the joint trial of cabinet members, however, as Col. Alva Carpenter, chief of the Legal Section, concluded that the Tokyo Judgment failed to set out compelling precedents to justify further prosecution of the highest-ranking civilian members of the Japanese government for war crimes. Only two international proceedings thus followed the Tokyo Trial, viz., the Tamura Trial and the Toyoda Trial.[8] Incidentally, the international character of the two trials was significantly reduced because no Allied Powers other than Australia, China, and the United States took an interest in participating in further international criminal proceedings. James S. L. Yang of the Chinese Mission, Tokyo, served in the seven-member tribunal for the Tamura Trial, and Brig. John W. O'Brien of the Australian army served as presiding judge of the seven-member tribunal for the Toyoda Trial. The rest were Americans.[9]

In addition to the three international tribunals at Tokyo, seven Allied nations contemporaneously set up other special war crimes courts across the former theaters of war. According to data collected by the Ministry of Legal

Affairs of the Japanese government in the post trial period (1950s–1970s), a total of 2,244 trials were carried out against 5,700 individuals at special national courts that were located at 51 separate locations across the Asia-Pacific region.[10] These trials are generally referred to as Class BC war crimes trials for the reason that the Allied courts received evidence of wartime atrocity in the main (known then as "Class BC" offenses in the Far Eastern war crimes program) but rarely the evidence of crimes against peace (known then as "Class A" offenses).[11]

The breakdown of the Allied war crimes trials in this theater (based on the Japanese government data) is as follows: 456 American trials against 1,453 war crimes suspects at Guam, Kwajalein, Manila, Shanghai, and Yokohama[12]; 330 British trials against 978 suspects in formerly Japanese-occupied British colonies in Southeast Asia, namely, Alor Setar, Hong Kong, Jesselton (present-day Kota Kinabalu), Johore Baru, Kuala Lumpur, Labuan, Penang, Rangoon (present-day Yangon), Singapore, and Taiping[13]; 294 Australian trials against 949 suspects in several different Australian-controlled territories in the South Pacific as well as recovered British and Dutch territories, namely, Ambon, Darwin, Hong Kong, Labuan, Manus, Morotai, Rabaul, Singapore, and Wewak[14]; 448 Dutch trials against 1,038 suspects at 12 separate locations in formerly Japanese-occupied Dutch East Indies, namely, Ambon, Balikpapan, Banjarmasin, Batavia (present-day Jakarta), Hollandia (present-day Jayapura), Kupang, Makassar, Manado, Medan, Morotai, Pontianak, and Tanjung Pinang; 39 French trials against 230 suspects at Saigon; 72 Philippine trials against 169 suspects at Manila[15]; and 605 trials against 883 suspects by the Republic of China at 10 different locations, namely, Beijing, Nanjing, Guangdong, Hankou, Jinan, Shanghai, Shenyang, Taipei, Taiyuan, and Xuzhou.[16] Of these, the total number of convicted was 4,403 and the acquitted, 1,018. As many as 984 of the convicted war criminals were sentenced to death, although the actual number of the executed fell short of 934 because some cases were not confirmed or, alternatively, remitted to lesser penalties. There were also cases of escape and suicide.[17] All these trials were completed within the six-and-a-half years of the Allied occupation of Japan, between September 1945 and April 1952.[18]

The Soviet Union took part in the Tokyo Trial in its capacity as an Allied Power, having its nationals represented at both the bench and the bar. That aside, the Soviet government carried out its own criminal proceedings against the Japanese suspected war criminals in the Russian Far East. But no comprehensive data about these trials are available to date. Approximately 3,000 Japanese are believed to have been tried in closed session on charges principally of espionage or counterrevolutionary acts in violation of Soviet criminal law. A total of 2,689 convicted war criminals were eventually repatriated to Japan.[19] The only public trial that the Soviet authorities held was a week-long special military trial at Khabarovsk in December 1949. Based principally on confessions taken from the accused, the Khabarovsk Tribunal heard

a joint case against twelve Japanese army officers on charges of developing, experimenting, and deploying bacteriological weapons. The Soviet authorities released the findings of the Khabarovsk Trial in its immediate aftermath to advocate the trial of Hirohito, the emperor of Japan. (Emperor Hirohito was not named as a war criminal due to an Allied joint policy decision, made back in April 1946, not to take any action against him.[20]) The Soviet initiative caused much consternation among other Allied governments, which preferred to adhere to the existing policy rather than opening up a new case. Nothing resulted from the Soviet initiative after all, however, as the Soviet Union dropped it out of diplomatic conversations by the end of 1950. No further talk of the trial of Hirohito occurred among the Allied Powers for the remainder of the occupation period.[21]

Quite apart from the Allied war crimes program, Communist Chinese are known to have undertaken their own proceedings against Japanese war criminals. Commonly referred to in the Japanese-language historical literature as "People's Trials" (*jinmin saiban*), some sorts of summary proceedings were carried out against suspected war criminals at the end of hostilities. These trials resulted in varying penalties in the case of convictions, including summary execution. Comprehensive data are not available to date. The only sources that shed light on the occurrence of these proceedings are retrospective accounts by repatriated Japanese accused.[22] Shortly after the founding of the People's Republic of China, the Communist Chinese initiated a new line of criminal proceedings against additional suspected war criminals that were transferred from the Soviet Union. A total of three cases involving forty-five accused were held at Shenyang and Taiyuan. The accused at these trials confessed to their own guilt and, in return, they received guilty verdicts and relatively lenient sentences.[23]

Of more than 2,240 trials held in this region, this book explores 14 only: the trials of Tamura and Toyoda and twelve others – mostly command-responsibility trials – that were held by American, Australian, British, and Philippine authorities. Several factors have influenced this author's decision to focus on a relatively small number of trials of high-ranking individuals and to do so with the Anglo-American proceedings only. First, research to date has revealed that the verbatim records of court proceedings are readily accessible with respect to the Anglo-American war crimes trials but not in the case of Chinese, Dutch, and French trials. At present, the latter nations' records are not open to public in their entirety due to various archival restrictions that apply at repositories of countries concerned. One could, for sure, make use of the National Archives of Japan, where the trial records collected by the Japanese Ministry of Legal Affairs in the early postwar decades are deposited. The Japanese collection is an incomplete set, however, and varying archival restrictions apply. (See the Conclusion for related discussion.) The limited access to the court records, in short, has made the Chinese, Dutch, and French trials a far less attractive option than the Anglo-American trials