

The Tokyo War Crimes Tribunal

Like its Nuremberg counterpart, the Tokyo Trial was foundational in the field of international law. However, until now, the persistent notion of “victor’s justice” in the existing historical literature has made it difficult to treat it as such. David Cohen and Yuma Totani seek to redress this by cutting through persistent orthodoxies and ideologies that have plagued the trial. Instead they present it simply as a judicial process, and in so doing reveal its enduring importance for international jurisprudence. A wide range of primary sources are considered, including court transcripts, court exhibits, the majority judgment, and five separate concurring and dissenting opinions. The authors also provide comparative analysis of the Allied trials at Nuremberg, resulting in a comprehensive and empirically grounded study of the trial. The Tokyo Tribunal was a watershed moment in the history of the Asia-Pacific region. This groundbreaking study reveals it is of continuing relevance today.

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Cambridge University Press
978-1-107-11970-3 — The Tokyo War Crimes Tribunal
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Law, History, and Jurisprudence

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CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

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www.cambridge.org

Information on this title: www.cambridge.org/9781107119703

DOI: 10.1017/9781316348659

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First published 2018

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

A catalogue record for this publication is available from the British Library.

ISBN 978-1-107-11970-3 Hardback

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Acknowledgments

This book is the result of many years of research and collaboration by the coauthors. During this time we have both presented papers and attended conferences in many countries where we have discussed our ideas with colleagues. In our conversations with other researchers engaged with World War II war crimes trials we have also learned a great deal from hearing their views and, of course, reading their scholarship. It would be tedious to list all of these individuals but our interlocutors know who they are and will perhaps forgive us for acknowledging them collectively rather than individually. We have benefited enormously from being part of the growing group of scholars in the United States, Europe and Asia who have turned their attention to World War II war crimes trials in general and the Tokyo Trial in particular. It has also been particularly heartening to see the emergence over the past decade of a group of younger scholars who are pursuing this field with energy and commitment. We are also grateful to them for having engaged with us in their research and collaborative activities.

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Note to the Reader on Translation, Sources, and Citation

I Transliteration, Ranks and Titles, and Translation

All Japanese personal and place names are transliterated in accordance with the standard style romanization. However, different types of romanization may appear in historical documents, such as Konoye Fumimaro instead of Konoe Fumimaro, Tojo Hideki instead of Tōjō Hideki, Kempeitai (military police force) instead of Kenpeitai, and so on. The former type of romanization is retained when providing direct quotes from historical documents. Most Chinese personal and place names are transliterated in accordance with the internationally accepted pinyin system of romanization. However, exceptions are made for those names that are better known with alternative romanization, such as Chiang Kai-shek instead of Jiang Jieshi, and Manchukuo instead of Manzhouguo. Japanese and Chinese names are given in the traditional manner throughout this book, that is, the family name precedes the personal name. The Western names that carry an umlaut (¨) are romanized in conformity with the transliteration practice in English, such as Roeling instead of Röling, and Weizsaecker instead of Weizsäcker.

When referring to individuals with ranks or titles, the highest rank or title retained at the end of hostilities is indicated at the first appearance of the name, such as “Baron Wakatsuki Reijirō,” “Lieutenant General Kawabe Torashirō,” “General Douglas MacArthur,” and so on. It is dropped thereafter (i.e., “Wakatsuki,” “Kawabe,” “MacArthur,” and so on). However, reference to wartime ranks and titles of certain individuals may be repeated if needed for clarification.

The Japanese word *rikugunshō* – which was the administrative branch of the Imperial Japanese Army – commonly appears in English-language historical documents as “War Ministry,” but it is a misnomer. This book will use instead the “Ministry of the Army” for the sake of accuracy, alongside the “Ministry of the Navy,” which is the English translation of *kaigunshō*, the administrative branch of the Imperial Japanese Navy. Similarly, the minister, the vice minister, ministry officials, and ministerial documents of *rikugunshō* are translated throughout this book as “army minister,” “vice army minister,” “army-ministry

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officials,” and “army-ministry documents.” Exceptions apply, however, in the case of direct quotes from those historical documents where the terms “War Ministry,” “war minister,” “vice war minister,” etc. are used. The translation of the navy side will appear as “navy minister,” “vice navy minister,” “navy-ministry officials,” and “navy-ministry documents.”

The operational commands of the Imperial Japanese Army and Navy were known as *sanbō honbu* (“General Staff”) and *kaigun gunreibu* (“Navy Operational Command,” renamed in 1933 as *gunreibu* [Operational Command]) respectively. This book will translate these terms as “Army General Staff” and “Navy General Staff” to reflect the actual functions of these two command organs.

II About the Records of Trials

Various editions of the record of the Tokyo Trial in print, digital format, microfilm, and microfiche are currently available. The National Diet Library at Tokyo, Japan, hosts large collections of the trial record and related documents that have been collected from the National Archives and Records Administration (NARA) at College Park, Maryland; the Australian War Memorial, Canberra; and various other archival repositories in Japan, such as the Japanese Supreme Court, the Japanese Ministry of Legal Affairs, the Asahi Newspaper Company, the University of Tokyo, Waseda University, and Ritsumeikan University. Some of the Diet Library’s holdings have been digitized and made accessible online, including the transcripts of court proceedings and the judicial decisions of the Tokyo Tribunal (www.ndl.go.jp/index.html). The Japan Center for Asian Historical Records (JACAR) of the National Archives of Japan hosts at its website a complete set of the digital version of the transcripts of court proceedings and court exhibits, in both English and Japanese (www.jacar.go.jp/index.html). The International Criminal Court Legal Tools Database similarly hosts at its website the English-language transcripts of court proceedings and court exhibits, but the uploaded court exhibits are an incomplete set (www.icc-cpi.int/en_menus/icc/Pages/default.aspx). While none of these digital sources are text-searchable, the Database of the Tokyo Trials Literature at Shanghai Jiao Tong University Press carries text-searchable English-language transcripts of court proceedings (www.tokyotrial.cn). This collection will be expanded to include English-language court exhibits, the Japanese-language trial record, and the Chinese translation of the same, in text-searchable format.

At the present time when digital databases of the Tokyo Trial are being developed worldwide in the foregoing manner, print editions of the trial record remain highly valuable. The ones that are indispensable to researchers are R. John Pritchard and Sonia Magbanua Zaide (eds.), *The Tokyo War Crimes Trial*, 22 vols. (1981) and its companion five-volume index and guide, R. John Pritchard, Sonia Magbanua Zaide, and Donald Cameron Watt (eds.), *The Tokyo*

War Crimes Trial: The Comprehensive Index and Guide to the Proceedings of the International Military Tribunal for the Far East in Five Volumes (1981–87); Neil Boister and Robert Cryer (eds.), *Documents on the Tokyo International Military Tribunal: Charter, Indictment, and Judgments* (2008); and *Kyokutō kokusai gunji saiban sokkiroki* [Transcripts of court proceedings of the International Military Tribunal for the Far East], 10 vols. (1968). This book uses a combination of these varied digital and print editions.

There are various editions of the record of the International Military Tribunal at Nuremberg (1945–46) and the twelve Subsequent Proceedings at the Nuremberg Military Tribunals under Control Council Law No. 10 (1946–49), also in print, digital format, microfilm, and microfiche. This book will make use of the following published editions: *Trial of the Major War Criminals before the International Military Tribunal: Nuremberg, 14 November 1945–1 October 1946*, 42 vols. (1947–49); and *Trials of War Criminals before the Nuernberg Military Tribunals Under Control Council Law No. 10, October 1946–April 1949*, 15 vols. (1949–53). These publications have been digitized and are made available at the website of the Military Legal Resources at the Library of Congress (www.loc.gov/rr/frd/Military_Law/Nuremberg_trials.html).

The official record of the Trial of General Yamashita Tomoyuki at the US military commission at Manila (“Yamashita Trial,” October–December 1945) comprises the following three sources: (1) the transcripts of court proceedings; (2) the decision of the US military commission at Manila; and (3) the review decision on the case by the reviewing authority, General Douglas MacArthur of the US Army. These records need to be distinguished from the summary of the Yamashita Trial as it appears in the United Nations War Crimes Commission’s *Law Reports of Trial of War Criminals*, vol. IV (1948), or the United States Supreme Court’s decision *in re Yamashita* on the habeas corpus motion (1946), since, despite the commonplace practice, these latter two sources are not part of the official record of the Yamashita Trial. This book will treat these sources accordingly. At present, the transcripts of court proceedings, the decision of the US military commission, and the review decision are available in hard-copy and on microfilm. They are housed at the National Archives and Records Administration (NARA) at College Park, Maryland, as well as various archival sites internationally.

The official records of contemporary trials at the international criminal tribunals and hybrid courts are available at their respective official websites: Extraordinary Chambers in the Courts of Cambodia (<https://eccc.gov.kh/en>); the International Criminal Tribunal for the Former Yugoslavia (www.icty.org/); the Special Court for Sierra Leone, the Residual Special Court for Sierra Leone (<http://rscsl.org/>); and the United Nations Mechanism for International Criminal Tribunals, the Legacy Website of the International Criminal Tribunal for Rwanda

(<http://unictr.unmict.org/>). Elements of these trial records are referred to both in the text and in notes by case numbers or other official names attributed to them, such as “Case File 002/19-09-2007-ECCC/SC,” “*Prosecutor v. Tadic*, Case IT-94-1-A,” “International Criminal Tribunal for the former Yugoslavia, Rules of Procedure and Evidence,” etc.

Legal documents and case law from the body of US criminal law literature are referred to in the notes according to the convention, such as “*Gideon v. Wainwright* 372 US 335.”

III Abbreviations and Citations in Notes and in the Text

When page numbers in the transcripts of court proceedings are referred to in this book, they are preceded by the prefix “T.” When citing a court exhibit, the exhibit number will be preceded by prefix “PX” in the case of the prosecution’s court exhibit, and “DX” in the case of the defense court exhibit. For instance, “PX257, T3453-4” means Prosecution Exhibit No. 257, pages 3453–4 in the transcripts of court proceedings.

To increase efficiency in citation practices, this book adopts certain special abbreviations for oft-cited sources. In Part I, the word “*Documents*” is used in notes when referring to Boister and Cryer (eds.), *Documents on the Tokyo International Military Tribunal: Charter, Indictment, and Judgments*. In Part II, further short citations and abbreviations are applied when referring to judicial opinions contained in the same publication. The decision by the majority justices is referred to as the “Majority judgment” in the text, and “MJ” in the notes. Separate opinions by Justices Henri Bernard, Delfin Jaranilla, Radhabinod Pal, and B. V. A. Roeling are referred to in the text as “Bernard’s dissenting opinion,” “Jaranilla’s concurring opinion,” “Pal’s dissenting opinion,” and “Roeling’s dissenting opinion,” and in the notes as “Bernard Opinion,” “Jaranilla Opinion,” “Pal Opinion,” and “Roeling Opinion,” respectively.

With regard to the judicial opinions by the president of the tribunal, Justice Sir William F. Webb, there are two versions that will be discussed throughout this book. One is his draft judgment, which is never published, but which is deposited at the Australian War Memorial (ref. no. 3DRL/2481), and the other is a much shorter text that Webb provided as his concurring separate opinion, and which is included in *Documents on the Tokyo International Military Tribunal*. Throughout this book, the former will be referred to as “Webb’s draft judgment,” or “The President’s Judgment,” and will be abbreviated in the notes as TPJ. The latter will be referred to as “Webb Separate Opinion” in notes.

Similarly, records of the International Military Tribunal at Nuremberg and the twelve Subsequent Proceedings at Nuremberg under Control Council Law No. 10 will be referred to in abbreviated form. The terms, “IMT Charter,”

“IMT indictment,” and “IMT judgment” are used both in the text. Sometimes, the IMT judgment is indicated as the “IMT Nuremberg judgment” so as to distinguish it from the judgments arising from the twelve Subsequent Proceedings, or “Nuremberg judgment” to distinguish it from the Tokyo judgment. The IMT trial record we utilize is contained in Volume 1 of *Trial of the Major War Criminals before the International Military Tribunal: Nuremberg*.

As for the Nuremberg Military Tribunals that heard the twelve Subsequent Proceedings, we utilize the official *trials of war criminals before the Nuernberg military tribunals under control council law no. 10, October 1946–April 1949*. 15 vols. The cases are abbreviated collectively as NMT in notes and in the text, and the judgments of individual cases as “Medical Case” and “Milch Case” (both contained in Volume 2); “Justice Case” (in Volume 3); “Einsatzgruppen Case” (in Volume 4); “RuSHA Case” and “Pohl Case” (both contained in Volume 5); “Flick Case” and “Hostages Case” (both contained in Volume 6); “Ministries Case” (in Volume 7); “Farben Case” (in Volume 8); “Krupp Case” (in Volume 9); and “High Command Case” (in Volume 11). For instance, “High Command Case, 512–15,” means the judgment of the High Command Case, pages 512–15 (in Volume 11 of *Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10*).

Abbreviated forms are also used in notes when citing other sources and secondary literature, such as “Reel, *The Case of General Yamashita*,” instead of “A. Frank Reel, *The Case of General Yamashita* (Chicago: University of Chicago Press, 1949).” The full citation information is provided in the list of References at the end of this book.