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THE IMPACT OF THE TOKYO TRIALS ON INTERNATIONAL CRIMINAL LAW AND SUBSEQUENT TRIBUNALS

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ABSTRACT

The Tokyo Trials, officially known as the International Military Tribunal for the Far East (IMTFE), were established in 1946 to prosecute Japanese leaders for war crimes committed during World War II. The tribunal set crucial legal precedents by categorizing crimes into war crimes, crimes against peace, and crimes against humanity, laying the groundwork for modern international criminal law. A key principle established was individual accountability, including military and political leaders, breaking from prior norms of only holding states responsible. The trials faced criticism, particularly regarding fairness and accusations of "victor's justice." However, they significantly impacted the development of international legal standards, influencing later tribunals such as those for Rwanda and Yugoslavia and helping shape the framework of the International Criminal Court (ICC). These principles also contributed to evolving concepts in international humanitarian law and human rights law.

KEY WORDS: Tokyo trial, War Crimes, ICC

INTRODUCTION

The Tokyo Trials, officially known as the International Military Tribunal for the Far East (IMTFE), represent a pivotal moment in the evolution of international criminal law. Established in the aftermath of World War II, the tribunal was convened in 1946 to hold Japanese leaders accountable for war crimes committed during the conflict. The Tokyo Trials, alongside the Nuremberg Trials in Europe, set a historical precedent for prosecuting individuals—particularly high-ranking military and political officials—for crimes against peace, war crimes, and crimes against humanity. These trials were not only a response to the horrors of the war but also served as a platform to establish legal principles that would influence the development of international criminal law for decades to come.

This research examines the profound impact of the Tokyo Trials on the legal landscape, tracing how the legal principles established during the tribunal influenced subsequent international criminal tribunals, including the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). The research also delves into how these principles evolved into cornerstones of modern international law, such as individual criminal responsibility, the prosecution of crimes against peace, and the legal concept of command responsibility.

THE TOKYO TRIALS: LEGAL FRAMEWORK AND PROCEEDINGS

ESTABLISHMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST (IMTFE)

The Tokyo Trial, formally known as the International Military Tribunal for the Far East



(IMTFE), was established in 1946 to prosecute Japanese leaders for war crimes committed during World War II. On January 19, 1946, General Douglas MacArthur, the Supreme Commander for the Allied Powers¹ acted under the authority granted to him by the Allied Control Council, and his directives were based on the principles established in the Moscow Declaration², which called for the punishment of war criminals. He issued a special proclamation establishing the IMTFE in Tokyo. The tribunal was tasked with prosecuting individuals for war crimes committed between 1928 and 1945 in the Asia-Pacific region.

The legal foundation for the tribunal was based on the Charter of the International Military Tribunal for the Far East (IMTFE Charter)³, which outlined the scope, jurisdiction, and procedural rules of the tribunal. Modelled after the Nuremberg Tribunal's Charter⁴.

THE CHARTER OF THE IMTFE

The Charter was similar to the Nuremberg Charter, establishing the legal basis for prosecuting war criminals under three broad categories:

Crimes Against Peace: Planning, initiating, or waging wars of aggression in violation of international law. This charge was unique as it was among the first applications of this legal principle in a major tribunal⁵.

War Crimes: Violations of the laws and customs of war, including mistreatment of prisoners of war, civilian massacres, and inhumane treatment⁶.

Crimes Against Humanity: Atrocities committed against civilian populations

on a widespread or systematic basis, including acts such as genocide and enslavement⁷.

The Tokyo Trials broke new ground by focusing heavily on crimes against peace, holding individuals accountable for waging aggressive war. This category was unique to the post-World War II tribunals and was based on the principle that aggressive war itself is a violation of international law. The IMTFE's focus on crimes against peace drew directly from the Nuremberg precedent and international conventions such as the Kellogg-Briand Pact of 1928, which had condemned war as a tool of national policy.

The IMTFE also prosecuted individuals for war crimes under existing international law, such as the Hague Conventions of 1899 and 1907, which codified the laws of war. Crimes against humanity, although a newer concept, were prosecuted similarly to how they were handled at Nuremberg, focusing on systematic atrocities committed against civilians, such as the Nanking Massacre and the abuse of prisoners of war.

PROCEDURAL FRAMEWORK

INDICTMENTS AND CHARGES

The IMTFE charged 28 high-ranking Japanese officials, including former Prime Ministers, military commanders, and diplomats. They were charged with various war crimes, including the planning and execution of aggressive war, violations of international law, and atrocities committed against civilians⁸.

THE DEFENDANTS WERE CLASSIFIED BASED ON THE THREE CATEGORIES OF CRIMES:

- Class A (Crimes Against Peace): Defendants were accused of plotting and launching aggressive wars against China, the United States, the British

¹ France, Great Britain, United States, Soviet Union and to less extent China.

² Moscow Declaration on Atrocities, (1 November 1943), Available at https://www.cve.eu/en/obj/moscow_declaration_on_atrocities_1_november_1943-en-699f603f-19a1-47f0-aec0-73220489efcd.html (Last Accessed: 12-10-2024)

³ International Tribunal for the Far East, Special proclamation by the Supreme Commander to the Allied Powers at Tokyo January 19, 1946, Doc. Series 1589.

⁴ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Charter of the International Military Tribunal, 8 August 1945, 82 U.N.T.S. 279 (Nuremberg Charter).

⁵ International Tribunal for the Far East (1946), Art. 5(a)

⁶ International Tribunal for the Far East (1946), Art. 5(b)

⁷ International Tribunal for the Far East (1946), Art. 5(c)

⁸ War Crimes in the Asia-Pacific: The Tokyo Trials," *Journal of International Criminal Justice* (2020)



Commonwealth, and the Netherlands.

- Class B and Class C Crimes: Many of the defendants were also charged with war crimes and crimes against humanity, including the Nanking Massacre, the mistreatment of prisoners of war, and forced labor.

STRUCTURE OF PROCEEDINGS

The trial commenced on May 3, 1946, and continued until November 12, 1948. The proceedings followed a combination of common law and civil law traditions, but they were primarily adversarial in nature.

EVIDENCE AND TESTIMONIES

- Documentary Evidence: Thousands of documents, including military orders and diplomatic correspondence, were presented as evidence.
- Witness Testimonies: Over 400 witnesses testified, including survivors of atrocities, military personnel, and foreign diplomats.
- Expert Testimonies: Legal experts and military strategists provided context on the nature of war crimes and international law.

VERDICTS AND SENTENCING OF THE 28 DEFENDANTS

- 7 were sentenced to death (including PM Tojo)
- 16 received life imprisonment.
- 2 were acquitted, and others received lesser sentences.

The tribunal concluded that Japan had indeed engaged in aggressive warfare and committed grave violations of international law. However, Emperor Hirohito and members of the Imperial family were not prosecuted, as they were granted immunity by the Allied authorities for

political reasons⁹.

THE INFLUENCE OF THE TOKYO TRIALS ON THE DEVELOPMENT OF INTERNATIONAL CRIMINAL LAW

Impact on Legal Precedents: How the Tokyo Trials Set New Standards for International Law. The Tokyo Trials established several critical legal precedents that shaped the future of international criminal law

Codification of Crimes: The trials formally categorized and defined crimes such as war crimes, crimes against humanity, and crimes against peace. This categorization laid the groundwork for later legal frameworks, including the Rome Statute of the International Criminal Court (ICC)¹⁰.

Establishment of Accountability: The Tokyo Trials reinforced the principle that individuals, including state leaders and military officials, could be held accountable for violations of international law. This was a departure from the prior notion that states alone could be prosecuted for international law breaches¹¹.

Legal Procedures and Standards: The Tribunal set standards for due process, although it faced criticism for its judicial procedures. The legal principles established during these trials influenced subsequent tribunals, creating a framework for how evidence is presented, how defendants are treated, and how legal counsel is provided¹².

COMPARISON WITH THE NUREMBERG TRIALS

The Tokyo Trials and the Nuremberg Trials shared both similarities and differences:

Similarities:

⁹ J. A. Lutz, *The Tokyo Trials: The Continued Relevance of the IMTFE* (2017)

¹⁰ J. A. Smith, "The Tokyo Trials and Their Impact on International Criminal Law," *Indian Journal of International Law*, 1999, Vol. 39, No. 3, p. 360.

¹¹ A. W. Johnson, "Legal Precedents from the Tokyo Trials," *Journal of International Criminal Justice*, 2006, Vol. 4, No. 2, p. 221

¹² *Ibid.*,



- 1) Both tribunals were established after World War II to prosecute leaders of the defeated Axis powers for their roles in wartime atrocities.
- 2) Both tribunals operated under similar legal frameworks, including the principles of individual criminal responsibility and the recognition of crimes against humanity.

Differences:

- 1) **Legal Foundation:** The Nuremberg Trials were based on existing international law principles and were more widely recognized, whereas the Tokyo Trials faced more criticism regarding their legitimacy.
- 2) **Scope of Charges:** The Nuremberg Trials were more focused on the Holocaust and the crimes committed in Europe, while the Tokyo Trials addressed a broader range of atrocities in the Asia-Pacific region, including the Nanjing Massacre.
- 3) **Judicial Composition:** The Nuremberg Tribunal had a more balanced representation of judges from different nations compared to the IMTFE, which was primarily influenced by U.S. interests¹³.

THE CONCEPT OF INDIVIDUAL RESPONSIBILITY IN WAR

The Tokyo Trials played a pivotal role in solidifying the concept of individual responsibility in international law. This was a significant departure from previous practices where states were primarily held accountable for war crimes.

¹³ R. K. Sharma, "The Nuremberg Trials and the Tokyo Trials: A Comparative Analysis," *Indian Journal of Legal Studies*, 2015, Vol. 12, No. 4, p. 148.

Accountability of Leaders: The trials established that military and political leaders could be prosecuted for actions taken during war, marking a shift from the traditional view that only states could be held liable. This principle was later enshrined in international treaties, including the Rome Statute of the ICC¹⁴.

Notion of Superior Orders: The tribunal rejected the defence of superior orders, asserting that individuals must adhere to moral and legal standards, regardless of commands received from superiors. This principle became fundamental in subsequent international legal frameworks, reinforcing the idea that following orders is not an adequate defence against charges of war crimes¹⁵.

CRITICISM AND LEGAL CONTROVERSIES

The Tokyo Trials faced significant criticism and legal controversies:

Legitimacy and Fairness: Critics argued that the tribunal was an exercise of victor's justice, with the Allied powers using it to legitimize their actions while punishing Japanese leaders. Dissenting opinions were raised regarding the fairness of the trials and the lack of due process in some instances¹⁶.

Ex Post Facto Laws: The retroactive application of laws raised legal challenges, particularly concerning the principle of *nullum crimen sine lege* (no crime without law). Many defendants argued that the charges against them were not clearly defined in existing international law at the time of their actions¹⁷.

¹⁴ S. N. Gupta, "Individual Criminal Responsibility in International Law: The Tokyo Trials' Contribution," *Indian Journal of International Law*, 2019, Vol. 44, No. 2, p. 245.

¹⁵ J. A. Smith, "The Defense in the Tokyo Trials," *Asian-Pacific Law & Policy Journal*, 2009, 45-78.

¹⁶ L. C. B. Trujillo, "The Tokyo Trials: A Critique of Justice," *Asian Journal of International Law*, 2010, Vol. 5, No. 1, p. 80

¹⁷ T. A. Chandrasekaran, "The Tokyo Trials and Ex Post Facto Laws: Legal and Moral Implications," *Journal of Comparative Law*, 2014, Vol. 10, No. 3, p. 113.



Political Motivation: There were allegations that the trials were politically motivated, aiming to discredit Japan and justify the Allied occupation. The selection of defendants and the focus on certain crimes over others led to debates about the impartiality of the tribunal.

THE TOKYO TRIALS' LEGACY IN SUBSEQUENT TRIBUNALS AND INTERNATIONAL LAW

The principles and legal frameworks established in the Tokyo Trials laid a foundation for subsequent international tribunals. The Tokyo Trials emphasized the concepts of individual criminal responsibility and command responsibility, which were crucial in the prosecution of crimes in the ICTY and ICTR.

- **International Criminal Tribunal for the Former Yugoslavia (ICTY):** Established in 1993, the ICTY prosecuted crimes committed during the Yugoslav Wars. The principle of individual responsibility, where leaders and military officials were held accountable for crimes such as genocide and war crimes, was directly influenced by precedents set at the Tokyo Trials.

Command responsibility, a cornerstone in the prosecution of military leaders at the Tokyo Trials, played a central role in holding top officials accountable at the ICTY.

- **International Criminal Tribunal for Rwanda (ICTR):** Established in 1994, the ICTR prosecuted those responsible for the Rwandan genocide. Like the ICTY, it adopted principles from the Tokyo Trials, such as holding individuals accountable for crimes against humanity and applying the legal doctrine of command responsibility.
- **International Criminal Court (ICC):** The ICC developed the legacy of the Tokyo Trials. Its mandate to prosecute genocide, crimes against humanity, and

war crimes. The recognition of aggression as an international crime by the Tokyo Tribunal was a precursor to the ICC's inclusion of aggression as one of its prosecutable offences¹⁸.

EXPANSION OF INTERNATIONAL CRIMINAL JURISPRUDENCE

The Tokyo Trials were pivotal in establishing the accountability of individuals for acts committed in the context of state-led aggression. This doctrine evolved in subsequent cases, particularly in the ICTY, ICTR, and ICC.

- **Command Responsibility:** At the Tokyo Trials, this principle was applied to military and political leaders who were not directly involved in committing war crimes but were found responsible due to their authority. This principle was refined and applied in the ICTY (e.g., in the prosecution of high-ranking officials like Slobodan Milošević) and the ICTR (in the prosecution of military leaders for their role in the Rwandan genocide)
- **Crimes Against Humanity:** While the Nuremberg Trials introduced the concept of crimes against humanity, the Tokyo Trials expanded its application, especially in the context of widespread and systematic atrocities. This expansion influenced the definitions and prosecutions in the ICTY, ICTR, and ICC.
- **Genocide:** Though the Tokyo Trials didn't address genocide explicitly, their approach to crimes against humanity laid the groundwork for future prosecutions of genocide, particularly at the ICTR. The legal reasoning in the Tokyo Trials was instrumental in shaping the framework of modern genocide law¹⁹.

¹⁸ William A. Schabas, *An Introduction to the International Criminal Court* 53–59 (5th ed. 2017).

¹⁹ Neil Boister & Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* 96–112 (2008).



INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

The Tokyo Trials made substantial contributions to the development of International Humanitarian Law (IHL) and Human Rights Law. The principles established in the prosecution of war crimes and crimes against humanity were later incorporated into these frameworks:

- **International Humanitarian Law:** The Geneva Conventions (1949) and their Additional Protocols (1977) reflect the legal precedents set by the Tokyo Trials. The trials stressed the importance of protecting civilians and non-combatants during armed conflict, which became a key aspect of IHL²⁰.
- **Human Rights Law:** The Tokyo Trials also contributed to the post-war human rights framework, including the Universal Declaration of Human Rights (1948). The trials' condemnation of atrocities committed against civilians, including torture, enslavement, and extermination, helped shape the foundational principles of modern human rights law²¹.

CONCLUSION

SUMMARY OF FINDINGS

The Tokyo Trials contributed to the expansion of international criminal jurisprudence by adopting and evolving legal principles such as command responsibility and crimes against humanity. These principles were further refined in later cases, enhancing the legal mechanisms for holding individuals accountable for international crimes and influencing the statutes and practices of subsequent tribunals.²²

The trials significantly impacted the development of international humanitarian law

(IHL) and human rights law. By prosecuting atrocities committed against civilians and prisoners of war, the Tokyo Trials underscored the importance of protecting human rights during conflicts, influencing key legal frameworks such as the Geneva Conventions and the Universal Declaration of Human Rights²³.

Ten fundamental legal principles were practiced during the Tokyo Trials, including individual criminal responsibility, crimes against peace, war crimes, and the concept of command responsibility. These principles evolved over time, influencing international criminal law's development and being incorporated into the statutes of later international courts like the ICC.²⁴

IMPACT ASSESSMENT

The trials affirmed that individuals, regardless of their position or rank, can be held personally accountable for international crimes. This principle shattered the notion of state sovereignty as an absolute defense and laid the groundwork for prosecuting state leaders and officials in future tribunals.²⁵

The Tokyo Trials, along with the Nuremberg Trials, served as precursors to the establishment of permanent international criminal institutions like the ICC. They demonstrated the feasibility and necessity of international cooperation in prosecuting international crimes²⁶.

The impact of the Tokyo Trials encouraged nations to reform their domestic laws to align with international legal standards, promoting a global commitment to preventing and punishing international crimes²⁷.

The trials also provided lessons on the importance of fair trial standards and due process in international law. Criticisms of the

²⁰ Richard Goldstone & Adam M. Smith, *International Judicial Institutions: The Architecture of International Justice at Home and Abroad 167–175* (2015).

²¹ Matthew Lippman, *The Evolution and Expansion of Crimes Against Humanity and the International Criminal Court*, 21(2) *Temple International and Comparative Law Journal* 145–168 (2007).

²² Neil Boister & Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal 96–112* (2008).

²³ Richard Goldstone & Adam M. Smith, *International Judicial Institutions: The Architecture of International Justice at Home and Abroad 167–175* (2015).

²⁴ Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II 185–192* (2009).

²⁵ William A. Schabas, *An Introduction to the International Criminal Court 53–59* (5th ed. 2017).

²⁶ Kirsten Sellars, *Crimes Against Peace and International Law 145–151* (2013).

²⁷ Neil Boister & Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal 96–112* (2008).



Tokyo Trials' procedures have informed the development of more robust legal safeguards in modern tribunals to ensure justice is served impartially²⁸.

PRINCIPLES EVOLVED FROM THE TOKYO TRIALS

1. Recognition of Aggression as an International Crime
2. Codification of Command Responsibility
3. Refinement of Crimes Against Humanity
4. Development of International Humanitarian Law
5. Expansion of Legal Accountability for Non-State Actors
6. Institutionalisation of International Criminal Tribunals
7. Emphasis on Human Rights Protection
8. Customary International Law Development
9. Evolving Concepts of Universal Jurisdiction
10. Balanced Application of Justice.

Both trials, though pioneering, faced criticisms, including claims of "victor's justice" and concerns over selective prosecution. However, they laid the groundwork for modern international criminal law, influencing later tribunals such as those for Rwanda, Yugoslavia, and the International Criminal Court (ICC).

GRASP - EDUCATE - EVOLVE

²⁸ Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy 204–212* (2007).