

The Tokyo War Crimes Trials as Victor's Justice

The Tokyo War Crimes Trials as Victor's Justice

Student's Name

Instructor

Course

[Date of Submission]

Introduction

According to some scholars, the Tokyo war crimes trials comprised victor's justice because the Japanese leaders subjected to trial faced unfair judgment from the Tribunal (Banerjee 2016, p. 67). These scholars hold this view because they argue that the tribunal gave preferential treatment to members of the Allies over the Japanese leaders facing trial. To understand the validity of this argument, three key aspects of victor's justice have to be examined. These are the crimes which the Japanese leaders were being accused of, the fairness of the proceedings, and the selectivity of the tribunal. The tribunal's intended purpose was to carry out the Cairo Declaration of November 1943, the Potsdam Declaration of July 1946, the Instrument of Surrender, and the Moscow Conference (Chang and Barker 2017, p. 38). The tribunal's main focus, however, stemmed from the Potsdam Declaration which stated that stern justice would be meted out to all the criminals of war who executed cruel practices upon the prisoners of war (Banerjee 2016, p. 68). When the Pacific war ended, the Allies, comprising judges and prosecutors from the U.S., Great Britain, the Soviet Union, and France, brought Tojo Hideki and 27 other political and military Japanese leaders to trial for three categories of crime during the war (Miller-Kim 2018, p. 20). These were crimes against peace, crimes against humanity, and conventional war crimes, including murder (Miller-Kim 2018, p. 20). The trials began on 3rd May 1946 and the final verdict was given on 4th November 1948 (Guillemin 2017, p. 278). During this time, two of the Japanese leaders under trial died, while one was declared mentally unfit to face trial (Guillemin 2017, p. 278). The ruling of the victorious Allies was that all the 25 surviving Japanese leaders were found guilty of the charges presented against them, and they, therefore, received sentences ranging from some years in prison to death sentences. Using Richard Minear's (1971) publication as a foundation, this essay examines the credibility of the rulings made by the Allies in the Tokyo war crimes trials. Minear (1971, p. 23) argues that the Tokyo Trials were founded on undemocratic principles that sought to serve the interests of the members of the Allies in three ways, which included problems of the international law, problems of the legal process, and problems of history.

First, the problems of international law are seen in the undemocratic approach of the Allies towards the Tokyo War Crimes Trials. During the Pacific war, members of the Allies promised to mete out stern justice against the criminals of war in the Potsdam Declaration (Witt and Kathryn 2016, p.20). The criminals of war were the Japanese leaders arraigned before the tribunal facing several charges. However, the system used to mete out stern justice to the Japanese leaders was designed solely by the members of the Allies during the International Conference on Military Trials in 1945, giving it a legal and moral bias. The Allies took it upon themselves to categorise the international laws so that all the accused Japanese leaders were found guilty and held accountable for the charges they were facing. This way, the legal framework of the proceedings did not allow the Japanese leaders to be tried fairly on the grounds of valid evidence presented before the tribunal, instead, the leaders were tried according to the categorised laws. The defendants would, therefore, be prosecuted for three categories of offences, namely Class A charges which comprised crimes against peace, Class B charges which comprised conventional war crimes such as murder and forced labour, and Class C charges which included crimes against humanity, for example, rape (Polunina 2016, p. 243). Class A charges were presented against Japanese political and military leaders only, while Class B and Class C charges were presented against leaders of any rank. Following an evaluation of crimes to determine the charges that an individual leader committed, only those found guilty of crimes against peace among others were arraigned before the tribunal for trial and prosecution. Due to the broad-based nature of the

charges, the Japanese leaders were put in a position where it was certain that they would be found guilty of the charges placed against them, denying them the right to a fair and just trial. Additionally, the reading of the International Conference on Military Trials of 1945 makes it apparent that the Allies, and therefore the Tribunal, had no intentions of practising the autonomous concepts of the justice system. Robert Jackson, The American Representative to the conference, stated that only one decision could be made during the Tokyo Trials (Minear 1971, p. 41). This goes to show that the tribunal went to the Tokyo Trials with a predetermined verdict to prosecute all the leaders that were brought in for trial. The trials, therefore were for a show of justice and democracy while in the real sense, the tribunal only sought to advance its interest of punishing the Japanese leaders. Further, the U.S. violated the provisions of its neutrality act during the period before the war. These violations were intended to weaken Japan both politically and economically so that the U.S. could attain its wartime goals during the Pacific war. These goals were aimed at punishing the Japanese leaders on moral and proper grounds (Guillemin 2017, p. 278). Due to these violations, however, the policies used by the Allies during the Tokyo Trials were therefore improper and morally biased. However, since the Allies produced both the judges and prosecutors for the Trials, the neutrality acts violations that led to the Pacific war were overlooked to protect the US, a member of the Allies. The credibility of the sentences passed to the Japanese leaders, therefore, was biased.

Additionally, the Allies were not keen on the precision of judicial systems (Witt and Kathryn 2016, p. 21). First, the Allies produced both the judges and the prosecutors, which was an unconventional approach towards the appointment of members of tribunal as provided in the justice system. By appointing all the members of the tribunal from one side the legal divide, the Allies denied the Japanese a chance of equal representation, and therefore fair trial while facing the charges presented against them. Additionally, the members of the Allies changed the rules of evidence so that the evidence collected for the trials were in favour of the members of the Allies while victimising the Japanese leaders (Polunina 2016, p. 245). Further, the defendants received death sentences through unconventional approaches to the verdicts. The U.S. Uniform Code of Military Justice posits that for an individual to be sentenced to death, all the members of the tribunal have to reach a unanimous agreement (Chang and Barker 2017, p. 46). In the Tokyo War Crimes trials, however, the tribunal used a majority vote to pass the death penalty sentence to the Japanese leaders, making the ruling a function of victor's justice. The life sentences given to the leaders were also biased because, according to the code, the decision to imprison an individual for life or to confine them for more than ten years must be reached by three-quarters or more of the members present (Banerjee 2016, p. 72). In the Tokyo Trials, however, these decisions were arrived at by majority votes during which the votes differed by one, making the life sentences and confinements given to the defendants unfair and unjust. The U.S. government overlooked its policies on the separation of power and roles during the proceedings of the Tokyo trials (Minear 1971, p. 85). As a government, America separates the roles of its executive, judicial and legislative arms so that each arm is run and functions independently of the other. The Allies, however, interlinked the roles of the judiciary and the executive by appointing both judges and prosecutors from the same side of the legal divide. The U.S. government, therefore, overrode its policies on the separation of governmental powers, as well as the Western concepts of justice to be included in the tribunal for the trials against the Japanese leaders.

Moreover, the narration of the historical accounts of the pre-war events and the events during the war by the members of the prosecution was inaccurate and biased in that the

historical events presented to the tribunal gave the Allies advantage over the Japanese leaders (Guillemin 2017, p. 285). Since the main agenda of the tribunal was to punish the Japanese leaders that were victimised while creating a good public image for themselves and the policies they used, the prosecution submitted evidence that was supportive of this agenda to the tribunal during the proceedings, making it easier to charge the Japanese leaders as guilty. Since the prosecution charged with the responsibility of collecting evidence for the trial was from the side of the Allies, the testimonies and narrations that they obtained as evidence were bound to be in favour of the policies of the Allies rather than supportive of both the sides so that the legal proceedings of the trials were equal for both parties. This, therefore, puts the victory acquired by the Allies for the Tokyo Trials in the light of victor's justice since it did not serve the purpose of uncovering the truth and therefore giving justice to the accused. The historical accounts of the Allies presented the Japanese leaders as totally responsible for the breaking out of the Pacific war by coming up with a plan for conspiracy to dominate the countries of the Far East region, and eventually, through forceful actions and help from the axis countries, dominate the entire world (Banerjee 2016, p. 81). Minear (1971, p. 139), argues that the tribunal during the Tokyo War Crime trials overlaid the historical and political conditions that led to the Nazi wars in Germany with the historical and political conditions that led to the Pacific War to make the conspiracy charges against the Japanese leaders suitable. From an account of the authentic events, however, the political and historical conditions that existed in both countries were very different. First, politically, Japan had neither a political party that was unified nor a dictatorial leader that could be likened to Hitler. Therefore, the leaders couldn't formulate a policy that would enable them to forcefully wage war against many nations for world domination (Boister 2016, p. 32). Secondly, the reasons that influenced the Pacific war and the European war and the nature of the two wars were different. The evidence of this is presented in the nature of the relationship between Japan and the Soviet Union during the war. Before the Pacific war broke out, Japan and the Soviet Union signed a non-aggression agreement in 1941, in which both countries agreed not to wage war against each other (Guillemin 2017, p. 281). Throughout the war period, Japanese leaders kept their end of the treaty even though Germany kept nudging them to wage war against the Soviet Union. On the other hand, however, the Soviet Union leaders violated the terms of their neutrality act and broke their end of the pact by going into war against Japan in August 1945 (Boister 2016, p. 28). Due to its membership in the Allies, the tribunal overlooked the violations to neutrality by the Soviet Union but charged the Japanese leaders as guilty of aggressively engaging the Soviet Union in war. With this view, therefore, the charges of aggression against the Japanese leaders were not credible and the verdict, therefore, was unfair and unjust.

In addition to these malpractices, the events that led to the Pacific war from the Allies' point of view differs significantly from the actual political and economic events that led to the war, particularly America's unjust actions towards Japan. Japan is an island nation, therefore limiting the resources available within the country (Witt and Kathryn 2016, p. 25). As a result of limited resources, the Japanese government is highly dependent on international trade with the countries in the Asian region and the Western countries to sustain its political and economic sectors. Since trade is a function of good relations, coordination, and cooperation between trading countries, Japan was intent on keeping good relations and peace with its trading partners. Further, good trade relationships depend on political stability and understanding between the leaders of the trading countries. However, due to political factors such as the existence of hostile European colonies, a politically weak China and the untrustworthy Soviet Union made it impossible for the Soviet Union to carry out trade efficiently within the Far East region (Boister 2016, p. 35). In addition to these regional

challenges, Japanese leaders had to deal with the American policies that favoured the importation of goods from China and other Western countries while barring importation of Japanese goods into the country (Polunina 2016, p. 252). To keep its political and economic sectors abreast in the surge of all the challenges facing the country, Japan took actions similar to those that Great Britain took when it was an empire and faced similar challenges to survive (Banerjee 2016, p. 87). However, since Great Britain was both a member of the Allied Tribunal and a European political superpower, the tribunal chose to overlook the offences committed by the nation while regarding similar actions by the Japanese government under similar conditions were regarded as criminal activities. Victimising the Japanese leaders for looking out for the needs of its citizens is an injustice to the Japanese and discrimination against them because the tribunal favoured their policies above administering justice fairly to the leaders.

Additionally, the violation of America's neutrality act by America is a factor that led Japan to wage the Pacific war. The United States, according to the provisions of the neutrality act was a neutral party in the war between China and Japan. The country, however, violated all the three components of its neutrality act which made the country non-partisan if another world war broke out. To begin with, the U.S. broke the provisions of the first neutrality act which prohibited the country from exporting arms, ammunition, and other implements of war from the U.S. to other countries that were at war (Guillemin 2017, p. 282). Additionally, the act also prohibited the country from offering any financial aid to the warring countries (Chang and Barker 2017, p. 47). The U.S., however, sided with China when the war between China and Japan broke out and provided the country with both vessels of war and weapons, together with a significant amount of monetary aid to supplement other needs that the country had during the period of war (Chang and Barker 2017, p. 48). This financial and substantial support from America put Japan in the vulnerable position of losing the war unfairly to China. Furthermore, the United States also violated the second neutrality act which forbade American ships from transporting items of war to foreign nations that were at war in addition to giving the president the power to allow belligerent countries to attain items of trade, such as vital raw materials, from the U.S. except from those that were used in war if the leaders of the country paid for the items before purchase and transported them on ships of non-American origin (Polunina 2016, p. 254). The U.S. made this provision deliberately to support France and Great Britain in case they had to go to war against the Axis countries, of which Japan was part (Boister 2016, p. 45). America, however, violated this neutrality act by prohibiting trade with Japan during the war and retracting a trade treaty it had with the Japanese nation. Since Japan is heavily dependent on trade to sustain both its political and economic sectors, these provocations of the U.S. led to the aggravation of the Japanese leaders, resulting in the Pacific war. The Pacific war, was, therefore, a response of the Japanese government to the injustices of the American nation in a bid to prevent the collapse of the nation. Despite these violations of the U.S. to its neutrality act and hostility towards Japan, the tribunal still found the Japanese political and military leaders guilty of aggression and waging war against other nations. This, therefore, resulted in a case of victor's justice for the Allies because they protected the U.S. at the expense of the Japanese leaders.

Finally, the political nature of the Tokyo War Crimes trials made the proceedings undeniably unfair towards the Japanese leaders that were arraigned before the tribunal. Two members of the tribunal confirmed that the policies used in the trial were politically inclined and therefore serving justice to the Japanese leaders was of secondary importance to the Allies. First, the Chief Prosecutor Joseph Keenan from the United States indicated that each justice in the tribunal was interested in upholding the interests and policies of the nations they

were representing rather than offering the right to a fair trial to any of the Japanese leaders (Boister 2016, p. 28). The main interest that these justices sought to fulfil was that of the Potsdam Declaration to mete stern justice to the Japanese leaders at all costs (Polunina 2016, p. 256). Moreover, Justice Radhabinod from India posited that the tribunal was an instrument that the Allies used to show their political power to the rest of the world because through the victory acquired by the Allies after the Tokyo Trials, the nations that were members of the Allies expected to have a global standing that made them seem more powerful than other nations in the world (Polunina 2016, p. 256). Further, out of the seventy suspects that were arrested, imprisoned, and awaiting trial, only twenty-eight political and military Japanese leaders were arraigned before the tribunal to face trial and prosecution (Boister 2016, p. 28). The other forty-two leaders were released in 1947 and 1948 without facing trial, although they had been found guilty of Class A war crimes. These forty-two leaders had other ranks in the Japan leadership circle which included the industrial and financial sectors and were charged with manufacturing of weapons that aided the Japanese during the war and trafficking narcotic drugs (Boister 2016, p. 28). From the release of these leaders from prison without a trial, it is quite clear that the policies that were used in the Tokyo Trials were biased against Japanese leaders in the political and military spheres. Therefore, the tribunal sought to fulfil the political interests of the countries and states which they represented.

Conclusion

Any ruling or verdict given by a Tribunal that is founded on multiple malpractices and procedures within the system is considered invalid. Given the numerous misgivings of the policies that were used in the legal proceedings of the Tokyo War Crimes Trials, the victory that the Allies acquired is justifiably a function of victor's justice perpetrated by the members of the Tribunal and the Allies. The Japanese leaders were left vulnerable, having an unequal chance to defend their rights while facing a corrupt system that sought to advance its political interests above providing the humanitarian right to a fair trial to them. Additionally, the tribunal's main agenda was vengeful, based on their need to fulfil the Potsdam Declaration of 1946. The numerous injustices towards these Japanese leaders, therefore, goes to prove that the argument that some scholars put forward concerning the victory of the Allies being a function of victor's justice justifiable and valid.

References

- Banerjee, M., (2016) Decolonization and Subaltern Sovereignty: India and the Tokyo Trial. In *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* (pp. 69-91). Palgrave Macmillan, Cham.
- Boister, N., (2016) Colonialism, anti-colonialism and neo-colonialism in China: the opium question at the Tokyo war crimes tribunal. In *War crimes trials in the wake of decolonization and Cold War in Asia, 1945-1956* (pp. 25-50). Palgrave Macmillan, Cham.
- Chang, M.H. and Barker, R.P., (2017) Victor's justice and Japan's amnesia: The Tokyo war crimes trial reconsidered. In *Japanese war crimes* (pp. 33-58). Routledge.
- Guillemin, J., (2017) The 1925 Geneva Protocol: China's CBW charges against Japan at the Tokyo war crimes tribunal. In *One hundred years of chemical warfare: research, deployment, consequences* (pp. 273-286). Springer, Cham.
- Miller-Kim, H., (2018) Tokyo war crimes tribunal-two sides to the trial: the Defense. *Law Libr. Lights*, 62, pp.20.
- Minear, R.H., (1971) Victors' justice: the Tokyo war crimes trial.
- Witt, Ms. and Kathryn, J., (2016) Comfort women: the 1946-1948 Tokyo war crimes trials and historical blindness. *The Great Lakes Journal of Undergraduate History*, 4(1), pp.17-34.
- Polunina, V., (2016) From Tokyo to Khabarovsk: Soviet war crimes trials in Asia as Cold War battlefields. In *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* (pp. 239-260). Palgrave Macmillan, Cham.