

The Tokyo War Crimes Tribunal (IMTFE): A Legacy of Failed Justice Comfort Women Action for Redress and Education

Following the end of World War II, the Allied Powers established the International Military Tribunal in Nuremberg under the London Charter and the International Military Tribunal for the Far East (IMTFE or Tokyo War Crimes Tribunal) under the Tokyo Charter. The purpose of the tribunals was to address the full spectrum of war crimes committed by the Nazi regime and the Japanese Empire; however, the Japanese imperial government's creation, operation, and concealment of the "comfort women" system and widespread practice of military sexual violence were neither fully investigated nor prosecuted.

From the outset, the IMTFE was handicapped in addressing the magnitude of crimes committed by Japan's Empire. Prior to the Tribunal, U.S. General Douglas MacArthur preemptively granted immunity to Emperor Hirohito and several high-ranking officials from all charges. Other parties escaping indictment included the Japanese secret military police (*Kempeitai*), the Japanese medical officers who had conducted horrific experiments on Chinese civilians at Unit 731 in Harbin, China, and Japanese industrialists who had profited from forced labor and property seizures in occupied or colonized territories.

The broad miscarriage of justice was rooted in ulterior motives among the Allied Powers. U.S. General MacArthur was concerned about the future threat of Communism and believed that leniency toward Japan's government would facilitate its support of Western dominance in the region and its recovery from America's devastating atomic bombs. The U.S. government was further interested in the results of Unit 731 and granted secret immunity to Japanese medical officers in exchange for that information. The Allied Nations also sought to occupy, or re-occupy, the vast territory ceded by the Japanese Empire.

The Tribunal initially charged nine senior Japanese political leaders and eighteen military leaders with three classes of crimes. "Class A" charges were for crimes against peace committed by Japanese leaders who had planned and directed the war. "Class B" charges were for war crimes and "Class C" charges were for crimes against humanity; these charges could be brought against any Japanese individual. The charges included the rape of prisoners, nurses, and civilians throughout China, particularly during the Nanking Massacre:

"Even girls of tender years and old women were raped in large numbers throughout [Nanking], and many cases of abnormal and sadistic behavior in connection with these rapings occurred. Many women were killed after the act and their bodies mutilated. . . . Approximately 20,000 cases of rape occurred within the city during the first month of occupation."

The Judgement noted Japanese soldiers' reports about the culture of military rape:

"One company commander unofficially gave instructions for raping as follows: 'In order that we will not have problems, either pay them money or kill them in some obscure place after you have finished.'"

"[W]e captured a family of four. We played with the daughter. . . . But as the parents insisted that the daughter be returned to them we killed them. We played with the daughter as before . . . and then killed her."

“In the half year of battle, about the only things I learned are rape and burglary.”

The Judgement also identified numerous incidents of sexual and gender-based violence during massacres at Manila, Hong Kong, and Blora (Indonesia). At the oil fields in Blora, Japanese soldiers killed all male personnel and raped women in front of their commanding officer. At the German Club in Manila, Japanese troops killed infants in their mother’s arms, then raped, burned, and mutilated the women. During the fall of Hong Kong on Christmas Day 1941, Japanese forces bayoneted patients in the Military Hospital at St. Stephen’s College and raped British and American nurses on duty. Throughout these campaigns, the violations extended to the burning, electronic shock, and mutilation of men and boys.

During ground maneuvers during the war, Allied Forces had learned about the “comfort women” network and its troops had encountered survivors who reported being deceived, pressured, and forced into sex work and transported from country to country. Despite the ample evidence, the Judgement made only a single reference to these incidents, noting the trafficking that occurred in Guangxi Province in southern China.

“During the period of Japanese occupation . . . they committed all kinds of atrocities such as rape and plunder. They recruited women labor on the pretext of establishing factories. They forced the women thus recruited into prostitution with Japanese troops.

In contrast, the Tribunal adopted a broader purview in other areas; for instance, it considered the role of public education in Japan in fostering militarism and ultra-nationalism under Education Ministers Koichi Kido and Sadao Araki, each of whom also served as War Ministers at various times.

Ultimately, the Tribunal convicted 25 defendants as Class A war criminals, applying “the law of nations” concerning the humane treatment of prisoners of war and civilians, as established through international law customs, treaties, and conventions. The Justices also incorporated findings from the Nuremburg Judgement, including the principle that state or sovereign immunity should not apply to certain acts “condemned by international law.” Further, a defendant’s assertion that he acted under the orders of the government or superiors did not absolve his responsibility, but could be considered towards mitigation of punishment, since “[t]he true test which is found in varying degrees in the criminal law of most nations is not the existence of the order but whether moral choice was in fact possible.”

Seven of the defendants received death sentences. The remainder were sentenced to imprisonment from seven years to life, but the Allied Powers later reduced many of the terms. Some of the convicted Class A criminals later ascended to political office, as well as other suspected individuals who were not tried, among them former Prime Minister Nobusuke Kishi. (Incidentally, Kishi’s grandson is former Prime Minister Shinzo Abe, who has repeatedly denied that “comfort women” were forcibly taken and complained about memorials to “comfort women.”)

The IMTFE is widely considered to exemplify victors’ justice, in that the victorious Allied Powers dictated the terms of justice, rather than objectively adjudicate the crimes. Of the eleven

nations represented by the thirteen justices, only three were from the Asia Pacific. In his notes of the Tribunal, Chinese Justice Mei Ju-ao observed that foreign prosecutors considered the bombing of Pearl Harbor in 1941 to be the starting date of Japanese aggressions, which ignored events dating back to the Manchurian Incident in 1928, and he pushed for recognizing the scope of atrocities at Nanking, which Chinese prosecutors had assiduously investigated. Indian Justice Radhabinod Pal eventually dissented from the majority and questioned the neutrality of the proceedings; he also opined that the accounts of rape in Nanking were exaggerated and questioned the witnesses' accounts. In a concurring opinion, Filipino Justice Delfin Jaranilla, who had endured the Bataan Death March and recused himself from hearing crimes committed in the Philippines, stated that the convictions were overly lenient.

In hindsight, the all-male and Western-dominated court was not ideally positioned to consider all of the nuances of gendered crimes against mostly Asian women and children. At the time of the victims' trafficking and detention, many of their respective homelands had lacked sovereignty, as colonies or territories occupied by Japan's imperial military and burdened by Japanese governance and discriminatory policies. In the late nineteenth or early twentieth century, Western nations had facilitated Japan's expansion and economic interests under bilateral agreements as imperialist powers. These included the Anglo-Japanese Alliance, in which Britain and Japan recognized each other's respective interests in China and Korea as a bulwark against Russian expansionism, and the Taft-Katsura Memorandum confirming America and Japan's understanding about their respective interests in the Philippines and Korea, following Japan's victory in the Russo-Japanese War.

In establishing the "comfort women" system, Japan's imperial government and military had exploited existing social mores that catalyzed the targeting and silencing of victims, who were mostly women and girls, but also included Dutch boys interned in Indonesia. Young women and girls in occupied or colonized territories were especially vulnerable to trafficking and recruitment through false promises of work and wages, because they tended to hail from impoverished rural areas, where those opportunities were scarce. The concept of an organized gang-rape system that incorporated medical personnel and procedures and trafficked victims across borders would not have occurred to most ordinary civilians as a horror to be avoided. Many of the survivors did not disclose what they endured for years, even to family members, because of fear and internalization of shock, stigma, and shame. They refrained from relationships or marriage or had difficulty bearing children due to the damage inflicted on their bodies.

It was not until the 1990s that the survivors – several hundred elderly women from South and North Korea, China, the Philippines, Malaysia, Indonesia, East Timor, and the Netherlands – chose to come forward publicly, beginning with Korean survivor Kim Hak-sun. Their testimonies revealed that the Japanese imperial military had committed a spectrum of violations, including mass rape, torture and murder of victims (in part to erase their existence as evidence of war crimes), infanticide (i.e., soldiers' killing newborns after pregnant victims carried to term), and forced abortions, sterilizations, and hysterectomies. These acts often involved racial discrimination arising from Japan's imperialistic rhetoric that it was superior to other cultures.

The IMTFE's legacy of stunted justice has underscored the Japanese government's position today that it bears no legal responsibility for the "comfort women" system. Japanese right-wing politicians and constituents persist in labeling the victims as "prostitutes" – perpetuating the fallacy that victims are capable of knowingly entering into the conditions of slavery – and

insisting that liability rests with lesser accomplices or collaborators. These equivocations sidestep the primary crimes of the government's masterminding and endorsement of a system that embodied human trafficking, gang-rape, reproductive harm, and severe emotional trauma.

In 1978, the Japanese government secretly memorialized fourteen of the convicted Class A criminals at Yasukuni Shrine, where it had previously memorialized Class B and C war criminals. The shrine was founded in 1869 as a symbol of the Japanese Empire and the Meiji Constitution, which designated Shintoism as the state religion and the Emperor as both the political and religious head of state. The Yūshūkan museum, which accompanies the shrine, entirely omits mention of Japan's wartime atrocities.

In December 2000, in response to the Japanese government's backsliding, a coalition of legal, human rights, and history experts, along with civic groups and activists, convened the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery. This was a people's tribunal that did not have legal authority, but it supplanted the IMTFE in moral authority. It provided a public forum for survivors to testify directly about their ordeals and for international law jurists to comprehensively gather and analyze historical records and evidence, ultimately rendering judgement against the Japanese imperial government under the command of Emperor Hirohito (posthumously, Emperor Shōwa).

Today, the Japanese government not only exploits impunity for the "comfort women" system but also seeks to eviscerate transitional justice efforts and to suppress statues, films, art exhibitions, textbooks, and educational programs memorializing the survivors and victims. Their aggressions have ranged from withholding funds to U.N. organizations to litigating against academics, journalists, artists, and activists seeking to illuminate the issue.

In the face of these well-heeled maneuvers by the Japanese government, openly discussing the history of "comfort women" and the repercussions of delayed justice take on even greater significance when examining the legacy of militaristic policy and culture and their effects on vulnerable communities. Failure to punish perpetrators contributes to an environment of impunity in which sexual violence and exploitation, both in and around conflict zones, continues to proliferate. As has happened in the case of the "comfort women," when such crimes are rendered invisible in legal and political processes, the repercussions inevitably hinder the enforcement of human rights norms and diplomatic relations for decades to follow.

APPENDIX A

Justices:

William Flood Webb (Australia)
 Edward Stuart McDougall (Canada)
 Mei Ju-Ao (China)
 Henri Bernard (France)
 Radhabinod Pal (India)*
 Erima Harvey Northcroft (New Zealand)
 Bernard Victor A. Röling (Netherlands)
 Delfin Jaranilla (Philippines)
 Maj.-Gen. Ivan Michyevich Zaryanov (Soviet Union)
 William Donald Patrick (U.K.)
 John P. Higgins (U.S.)
 Myron C. Cramer (U.S.)

APPENDIX B

Convicted Class A War Criminals:

LAST NAME, First Name	Sentence	Memorialized at Yasukuni Shrine
ARAKI Sadao (War Minister 1931-34; Education Minister 1938-39)	Life imprisonment; released 8 years later	
DOHIHARA Kenji	Death sentence	*
HASHIMOTO Kingoro	Life imprisonment; later released	
HATA Shunroku (War Minister, 1939-40)	Life imprisonment; later paroled	
HIRANUMA Kiichiro	Life sentence	*
HIROTA Koki	Death sentence	*
HOSHINO Naoki	Life imprisonment; later released	
ITAGAKI Seishiro (War Minister 1938-39)	Death sentence	*
KAYA Okinori	Life imprisonment; later released and appointed Minister of Justice	
KIDO Koichi (Education Minister, 1937-38; Lord Keeper of the Privy Seal, 1940-45)	Life imprisonment; later paroled	
KIMURA Heitaro	Death sentence	*

LAST NAME, First Name	Sentence	Memorialized at Yasukuni Shrine
KOISO Kuniaki	Life imprisonment	*
MATSUI Iwane (General and Commander of troops, 1937-38, including during Nanking Massacre)	Death sentence	*
MATSUOKA Yosuke	Died pre-trial	*
MINAMI Jiro	Life imprisonment; later paroled	
MUTO Akira	Death sentence	*
NAGANO Osami	Died during trial	*
OKAWA Shumei	Avoided trial due to mental illness	
OSHIMA Hiroshi	Life imprisonment; later paroled	
OKA Takazumi	Life imprisonment	
SATO Kenryo	Life imprisonment; later released	
SHIGEMITSU Mamoru	7 years' imprisonment; later served as Deputy Prime Minister, Foreign Minister, and ambassador to the Soviet Union, the U.K., and China	
SHIMADA Shigetaro	Life imprisonment; later released	
SHIRATORI Toshi	Life imprisonment	*
SUZUKI Teiichi	Life imprisonment; later paroled	
TOGO Shigenori	20 years' imprisonment	*
TOJO Hideki (served as Prime Minister, War Minister, and head of the Home Ministry simultaneously from 1941-44)	Death sentence	*
UMEZU Yoshijiro	Life imprisonment	*



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