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The Pacific War Crimes Trials: The Importance of the "Small Fry" vs. the "Big Fish"

Lisa Kelly Pennington
Old Dominion University

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THE PACIFIC WAR CRIMES TRIALS: THE IMPORTANCE OF THE "SMALL FRY" VS. THE "BIG FISH"

by

Lisa Kelly Pennington
B.A. May 2005, Old Dominion University

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ABSTRACT

THE PACIFIC WAR CRIMES TRIALS: THE IMPORTANCE OF THE “SMALL FRY” VS. THE “BIG FISH”

Lisa Kelly Pennington
Old Dominion University, 2012
Director: Dr. Maura Hametz

In the post-World War II era, the Allied nations faced multiple issues, from occupying the Axis countries and rebuilding Europe and Japan to trying war criminals for atrocities committed prior to and during the war. War crimes trials were an important part of the occupation process and by conducting the trials, the Allied nations hoped not only to punish war criminals, but to provide examples of democratic principles to the former Axis powers and deter future wartime atrocities. When considering war crimes trials, it is most often Nuremberg that comes to mind, and it is Nuremberg that has dominated much of written history since the trials took place. However, the Pacific saw over 2,000 war crimes trials and over 5,000 defendants, divided into Class A and Class BC categories, with trials conducted by several Allied nations. In the Pacific arena, the Class BC suspects were considered “small fry” compared to the “big fish” suspects such as Hideki Tojo who were tried as Class A criminals in Tokyo.

The Allies’ goals in the Pacific were to punish war criminals and instill democratic principles in Japan. Given the realities of the post-war period and the differences between the trials, did the Tokyo Trial and the Class BC trials held by the United States at Yokohama accomplish what they intended? This study argues that the Class BC trials at Yokohama were more successful in accomplishing the goals of the United States in the post-war era, and played the more important role in global politics.
The Tokyo Trial, while more widely known, was primarily a show trial designed to symbolize the end of a militaristic Japan, and instead of punishing war criminals the countries involved pursued their own private political agendas.
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I extend my thanks to Dr. Hametz for leading me to the topic of the Pacific war crimes trials and for her guidance throughout this process.

I am especially grateful to the MacArthur Memorial not only for their financial support for this project, but for their research assistance.

Last but not least, I would like to thank my family and friends, especially Colleen Parker, for their support throughout graduate school.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>CINCAFPAC</td>
<td>Commander in Chief, Armed Forces, Pacific</td>
</tr>
<tr>
<td>CINCAFPAC ADV</td>
<td>Commander in Chief, Armed Forces, Pacific, Advisor</td>
</tr>
<tr>
<td>CINCFE</td>
<td>Commander in Chief, Far East</td>
</tr>
<tr>
<td>DA</td>
<td>Department of the Army</td>
</tr>
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<td>FEC</td>
<td>Far Eastern Commission</td>
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<td>IMTFE</td>
<td>International Military Tribunal for the Far East</td>
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<tr>
<td>IPS</td>
<td>International Prosecution Section</td>
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<tr>
<td>JAG</td>
<td>Judge Advocate General</td>
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<tr>
<td>JCS</td>
<td>Joint Chiefs of Staff</td>
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<tr>
<td>NARA</td>
<td>National Archives and Record Administration</td>
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<tr>
<td>POW</td>
<td>Prisoner of War</td>
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<td>SCAP</td>
<td>Supreme Commander for the Allied Powers</td>
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CHAPTER I
INTRODUCTION

The end of World War II left the Allies with a long list of tasks to accomplish to help the world recover from a brutal and far reaching war. The war resulted not only in the destruction of large parts of Europe and Asia, but it also saw wartime atrocities never before imagined. These atrocities could not be ignored, and in addition to rebuilding Europe and the Pacific, the Allies were determined to conduct trials to hold responsible those who committed war crimes.

The Allies conducted trials in both Europe and the Pacific. Nuremberg and the horrific stories about the Holocaust captured the world’s attention. The trials in the Pacific received scant attention compared to those in Nuremberg. Even the trial of the major war criminals held at Tokyo, including Hideki Tojo, the former Minister of War, was virtually ignored.

After the trials Nuremberg remained the focal point and it has dominated much of written history about post war trials. Often, the only Pacific trial remembered is the Tokyo Trial, generally considered the only important trial that occurred in the Pacific. Solis Horwitz, an American prosecutor during the trial, described the Tokyo Trial “one of the most important trials in world history” due to its “outstanding example of concerted actions by eleven nations representing more than one-half of the peoples in the world” and its significance “to all who are concerned with the elimination of war as a means of settling international differences and with the establishment of a system of world peace and order under law.”1 The President of the Tokyo Tribunal Sir William Webb declared

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shortly after the tribunal convened, "there has been no more important criminal trial in all
history."²

The Allies divided war crimes into three classes. Class A crimes, or crimes
against peace, constituted the "planning, preparation, initiation, or waging of a declared
or undeclared war of aggression, or a war in violation of international law, treaties,
agreements or assurances, or participation in a common plan or conspiracy for the
accomplishment of any of the foregoing." Class B crimes, or conventional war crimes,
concerned the violations of the rules or customs of warfare. Class C crimes, considered
crimes against humanity, were defined as "murder, extermination, enslavement,
deportation, and other inhumane acts committed against any civilian population, before
or during the war, or persecutions on political or racial grounds in execution of or in
connection with any crime within the jurisdiction of the Tribunal, whether or not in
violation of the domestic law of the country where perpetrated."³ In the Pacific between
1946 and 1949 Class B and Class C trials predominated.

The purpose of dividing war crimes trials into three classes was to punish those
who committed war time atrocities according to the severity of their crimes. Crimes
against peace were considered the most serious. Behind the scenes several other factors
and goals of the Allied nations influenced the trials, which developed in different ways.
By the time the trials concluded, the Class A and Class BC trials had accomplished
different things. The Tokyo Trial had served as an education tool and the representative
end to an era of Japanese militarism and ushered in a new and, more importantly,

² R. John Pritchard, "An Overview of the Historical Importance of the Tokyo War Trial," Nissan
³ CINCAFPAC ADV, CINCAFPAC, from Washington, 22 September 1945. MacArthur Memorial
Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 "12 September 1945-21 June 1946."
democratic period for Japan. The Class BC trials at Yokohama punished war criminals in
the manner stated in the Potsdam Declaration and also proved more useful in the global
political arena than the Class A trial.

The Class BC trials were not considered important, even as they were taking
place. Class BC criminals were "small fry" according to a memo of 12 November 1945,
which pushed for prompt conclusion of the trials after they had already begun. The
United States wanted a rapid first conviction, whether it was of General Yamashita in the
Philippines or of another "small fry" defendant. At the outset, the United States was in a
hurry to begin punishing war criminals. This quickly changed as tensions arose between
the United States and Soviet Union. In contrast, Class A war criminals tried in Tokyo
were considered the "big fish," responsible for planning an aggressive war. The purpose
of this study is to show that the forgotten BC trials accomplished what they set out to do.
They were also used as a tool by the United States in their mission to turn Japan into an
ally against Communism in East Asia.

The legacy of the Tokyo Trial is steeped in controversy. Often viewed as a show
trial riddled with procedural flaws that resulted in victor's justice for the Allied nations, it
was touted as an important and fair trial of Japan's wartime leaders. Issues raised by the
defense and even some of the judges questioned the validity of their jurisdiction at the
conclusion of court proceedings. The first published work on the Tokyo Trial written in
1950 by American prosecutor Solis Horwitz, presents the general background to and
description of the trial. Though Horwitz supported the trial and its accomplishments, he

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4 CINCAFPAC (for Whitlock) from CINCAFPAC ADV Marshall, 12 November 1945. MacArthur
Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 "12 September 1945-21 June 1946."
alluded not only to the fact that other opinions of the trial might arise but also to the tensions that emerged between the United States and Soviet Union:

Amidst the tensions of the new post-war conflicts the members of the Tribunal might have succumbed to a feeling that their task was a futile one. It is of the utmost significance that they did not succumb, but, even under the impact of events which might foreshadow a conflict more horrible than the one just concluded, they elected to reaffirm as an act of faith, their conviction that war was not a necessary concomitant of international life and that acknowledged principles of law and justice were fully applicable to nations and their leaders. *Whatever may be the ultimate decision on the merits of this judgment*, perhaps the real significance of the work of the Tokyo Tribunal lies in this act of faith.5

Aside from Horwitz’s description of the trial, the trial record, and sources that focused on the international law aspect published soon after the trial’s conclusion, the first work to critically examine the Tokyo Trial was not published until 1971. Richard Minear’s *Victor’s Justice: The Tokyo War Crimes Trial* relied heavily on the record of the trial proceedings as well as a few secondary works that briefly mentioned the trial but did not go into detail. Minear used Japanese language sources in his work and bluntly stated in his preface that his task was “to demolish the credibility of the Tokyo Trial and its verdict.”6 He then proceeded to attack all aspects of the trial, from the Charter to the judgment. As a work of political scholarship, he focused on international law and the legal conflicts that arose during the trial, many of which were genuine concerns brought up before the tribunal. However, the angry tone of his work detracts from the important questions he raised. Minear, heavily influenced by the Vietnam War, hoped that “an awareness of the absurdities and the inequities of the Tokyo Trial will help us to rethink some of our assumptions about American policy in Asia, about Japan, and about

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5 Horwitz, “The Tokyo Trial,” 575 (italics added).
Indochina.”

The text is an easy read, especially given the technical international law
Minear deals with, but it is difficult to separate his judgment from the concerns he raises
about the legal legitimacy of the Tokyo Trial.

The next major work to focus on the Tokyo Trial, published in 1987 by Arnold C.
Brackman, a United Press staff correspondent who covered the Tokyo Trial, detailed all
aspects of the trial. Present for most of the trial, Brackman saved the transcripts
presented to the press of each day’s testimony. Aside from the transcripts, Brackman
relied on the material in his own files from his time in Japan, news stories, official court
records, and interviews with participants. Brackman offers an in-depth look at the Tokyo
Trial that presents the problems that arose during the trial. His text is not intended as
historical analysis but as a journalistic accounting of the trial. He succeeds in presenting
a thorough explanation of the court proceedings, the key people involved, and the issues.

In the 1980s, as trial records became declassified, historians began to reconsider
the legacy of the Tokyo Trial. In 2001, Timothy Maga argued that the Tokyo Trial had
good intentions and “might even have done good work.”

Maga was criticized for failure
to appropriately analyze and an apparent attempt to cover too many topics in too short a
work. Maga introduced some of the lesser trials, specifically those held by the United
States on Guam and ended his text by tying the Tokyo Trial’s legacy to the creation of a
permanent international tribunal to try war criminals. Maga raised an interesting point of
view on the trials but a more narrow focus or a longer text would have allowed for a more
thorough review.

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7 Minear, Victor’s Justice, xiv.
8 Timothy Maga, Judgment at Tokyo: The Japanese War Crimes Trials (Lexington: University Press of
Kentucky, 2001), ix.
Yuma Totani in 2008 also challenged the negative view of the Tokyo Trial and provided a bibliography detailing the extensive archival and primary resources used in the text as well as a plethora of secondary sources. A Japanese historian trained in the United States, Totani’s sources are both English and Japanese, allowing him to offer the Japanese perspective on the trials usually lacking in English language works. Perhaps most helpful is Totani’s discussion of the analysis of the Tokyo Trial, beginning with the positive view taken by the first trial analysts who often saw the trial as a success, to the idea the trial was victor’s justice and finally the slowly evolving opinion that the trial was not simply designed for revenge as more records are declassified and made available to historians. Totani seems to agree with Awaya Kentaro who argued that the trial “was neither a revenge trial nor a just trial, but one that fell somewhere in between.” This stance does not really further the argument that the trial was a positive force, nor completely refute the argument that the trial was victor’s justice, but the work offers evidence for both points of view.

Three English language memoirs by or about the Tokyo defendants exist. Two are by Class A criminals who were arrested and held at Sugamo Prison, but never tried. Both are titled Sugamo Diary and offer clues about the life of the suspects of all classes of war crimes held at Sugamo. Yoshio Kodama’s memoir is more positive about the United States than Ryoichi Sasakawa’s, but both authors to some extent disagree with the trials. Kodama did not feel the trials would accomplish their goals, while Sasakawa believed the United States should focus instead on communism and hoped to use his

position as a Class A suspect to defend Japan and educate the world on the events that led Japan to act aggressively. Sasakawa’s memoir clearly has an agenda, but even Kodama’s work must be critically examined given his position as a suspected war criminal facing the possibility of a trial.

Shinsho Hanayaman’s memoir, The Way of Deliverance: Three Years with the Condemned Japanese War Criminals offers a different perspective. Hanayaman was the Buddhist priest who administered to the prisoners at Sugamo. His work centered on his interactions with the suspected war criminals, particularly those who were condemned to death, including the seven major war criminals from the Tokyo Trial. Hanayaman tried to refrain from politics and focus instead on the spiritual experiences and lives of the men in prison. Since Hanayaman was often the last person to interact with the condemned men prior to their execution, he was able to relay their final messages and actions, which is a unique perspective in the literature that generally focuses only on the wrongdoings committed. Hanayaman did not go so far as to apologize for the war criminals, but often speaks highly and respectfully of them.

In addition to these major texts, various articles and portions of monographs focus on the Tokyo Trial. The topics vary widely and cover ideas from aspects of international law, the controversies, the defendants, and the dissents produced by several of the justices. Few works however focus solely on the Tokyo Trial like Minear and Brackman. Many seek to place the trial in the context of World War II or the emerging Cold War. For the most part, the trial is still viewed negatively, though Totani suggests that new scholars will soon challenge that view.

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In contrast, little has been published on the Class BC trials. In 1979 Philip Piccigallo published a study entitled *The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951*. Piccigallo’s study was the first English language text to deal with the Class BC trials. After a chapter devoted to the Tokyo Trial, the text served as an overview to the many lesser trials conducted in the Pacific by the various Allied nations. Piccigallo’s work is organized by Allied country and in an effort to present a balanced view on each nation that conducted trials, each chapter offers information on the procedure and machinery used to conduct the trials, as well as the trials themselves and the outcome. Piccigallo relied heavily on governmental records regarding court proceedings and generally argues that the lesser trials were fair and effective in punishing Japanese war criminals, a task he deemed necessary. He was straightforward in his intent and stated his work was focused on operational aspects of the trials. Piccigallo hoped to inspire further inquiry into the trails, and to “rescue lesser Japanese trials from historical oblivion.”

His work was generally well received, and his main contribution was the introduction of the lesser trials to the attention of a wider audience. He cites a need for additional research into that area and accomplishes his goal of offering an overview of the procedure of the lesser trials.

John L. Ginn, an American stationed at Sugamo Prison in 1948, published a work in 1992 that focused on Sugamo, and the trial and sentencing of war criminals of all three classes. Like Piccigallo’s work, Ginn’s provides an overview of the trials. He detailed select Class BC cases and provided a listing of all the Class BC trials at Yokohama as

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well as the verdicts and sentences of the defendants. The driving force behind his text however, is the prison itself and the Americans who served there. Ginn offers a look at how Sugamo Prison functioned and the lives of the American soldiers stationed there. He also provides background information on the war crimes trials, but the text is a memoir and does not analyze the importance of the trials. The text is useful for background reading and for the list of the outcomes of the Class BC trials at Yokohama however.

Recent scholarship has highlighted the importance of the Class BC criminals. Sandra Wilson's study of the Class BC criminals and their campaign for release after the trials concluded sheds light on these lesser known criminals and their political activity while serving their prison sentences. The Class BC prisoners were widely supported in Japan after the war and the public was very much involved in the fight for their release. While Wilson's work does not focus on the trials themselves, she offers a unique perspective on the lives of the "small fry" and their importance, and demonstrates how Japan did not forget these men after the peace treaty was signed and Japan regained its sovereignty. Wilson makes use of Japanese language sources, which allow her to present the Japanese view on the condemned men and counter the American view on the release of war criminals.

Overall, English language sources on the Japanese war crimes trials are limited. A few memoirs by Japanese participants were published, though they are memoirs of Class A prisoners. Currently no English translations of memoirs by Class BC prisoners exist. Government documents, including the trial records, are plentiful but offer only

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American perspectives on the trials. The Class A trial record does include the dissenting opinions of several justices, but unlike the Nuremberg Trial, the Tokyo proceedings were not widely published and distributed. The dissenting opinions however do offer perspectives on the trial from other Allied countries and provide support for those critical of the trial. The Class A trial record has been examined, most extensively by R. John Pritchard and Sonia Magbanua Zaide who compiled the court proceedings into a 22 volume set. No compilation or extensive study of the Class BC trial records exists.

Piccigallo stated, “such an attempt, although ultimately needed, would demand Herculean effort--certainly exceeding the capabilities of one individual--and must therefore await the combined labor of future scholars.”\(^{15}\) The United States alone conducted over 400 Class BC trials, resulting in a massive number of records.

The University of California at Berkeley offers the Judge Advocate General Review synopses of 160 Yokohama trials through its War Crimes Study Center. The Center holds microfilm copies of the trial records from the National Archives, and provides the only online access to the information contained in the records. The entire trial record is not reproduced online. The information provides the defendant’s name, charges and specifications, and the verdicts and sentences. In addition, comments from the reviewing authority are included as well as a very brief description of the arguments of the prosecution and defense. The project is far from complete, and each case presented on the website does not contain all the relevant information. The synopses do offer a starting point for the Yokohama trials and may be used to choose specific trials for further research, though only approximately half of the trials have synopses.

\(^{15}\) Piccigallo, *The Japanese on Trial*, xiii-xiv.
The Class BC trials were just as large an undertaking as the Class A trial, if not larger. The Class BC trials involved more defendants and required more time than the Class A trial. With constantly changing military commissions, the lesser trials were forced to carefully consider procedure in order to ensure each defendant received a fair trial. Perhaps because they lacked the prestige and limelight of the Class A trial, the Class BC trials were able to focus on punishing Japan’s war criminals and prove useful as a bargaining chip in the post-war era.
CHAPTER II
CLASS A WAR CRIMES TRIAL: TOKYO

The Potsdam Declaration of 26 July 1945 set the goal of the war crimes trials in the Pacific theater. The United States, Great Britain, and the Republic of China stated that while they did not intend to enslave the Japanese or destroy them as a race, “stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners.”¹ The Potsdam Declaration also called for the Japanese government to remove all obstacles to the establishment of democratic principles among the Japanese people.² The war crimes trials offered the Allies an opportunity to model democratic principles for the Japanese, and demonstrate the process of fair trials.³

With the goals of punishing war criminals and turning Japan into a democracy in mind, the Allied nations set up individual commissions to prosecute Class BC criminals, and the International Military Tribunal for the Far East (IMTFE) to try the Class A suspects.

The Tokyo Trial was steeped in controversy, and it is often denounced as a show trial and an example of “victor’s” justice since the judges appointed to the Tribunal all represented victor nations. The defense challenged the court, stating that the tribunal members represented the accusers and were therefore unable to be impartial.⁴ This is only one of the many problems that would arise as the United States sought to assert itself in its newfound superpower role in the aftermath of the war.

¹ Potsdam Declaration, July 26, 1945, Article 10.
² Potsdam Declaration, Article 10.
³ Piccigallo, The Japanese on Trial, 7.
⁴ Minear, Victor’s Justice, 77.
As the trial progressed and stretched far past the six months initially allotted for the court proceedings, it was clear that the United States had concerns other than the punishment of Japan’s major war criminals. Ultimately, the trial served more as the finale to the war in the Pacific theater and ushered in a new era as the United States followed its own separate agenda. Japan’s major war criminals were sentenced, but even some of the tribunal members questioned the validity of their jurisdiction and ability to impose punishment on the twenty-five men who would sit in the dock in Tokyo.

ESTABLISHING THE IMTFE: EARLY CONFLICTS

Several documents led to the establishment of the IMTFE in January 1946. In addition to the Potsdam Declaration, the Cairo Declaration and the Instrument of Surrender contributed to the IMTFE’s creation. The Cairo Declaration, signed by the United States, the Republic of China, and Great Britain on 1 December 1943 was an agreement between the Allies to “restrain and punish the aggression of Japan.” The Declaration described the Allies’ intention to return all the territory Japan occupied during the war, and their desire for an unconditional surrender. On 2 September 1945, representatives for Emperor Hirohito and the Japanese government signed the Instrument of Surrender, placing all Japanese armed forces under Allied control. The Instrument of Surrender guaranteed that the conditions of the Potsdam Declaration, including war

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5 International Military Tribunal for the Far East, Judgment (Tokyo, November 1948), Part A, 2.
crimes trials, would be carried out as ordered by the Supreme Commander for the Allied Powers (SCAP.)

After the surrender, the United States occupied Japan. A law making body for the Occupation, the Far Eastern Commission (FEC), was founded in December 1945. The FEC’s purpose was to “formulate the policies, principles, and standards” for the Japanese surrender and subsequent Occupation by Allied forces. At the Moscow Conference on 26 December 1945, the United States, Great Britain, the USSR and the Republic of China agreed that the Supreme Commander had the power to “issue all orders for the implementation of the Terms of Surrender, the occupation and control of Japan and directives supplementary hereto.” President Truman designated General Douglas MacArthur as Supreme Commander. Truman wanted MacArthur to have “complete command and control” in Japan. The United States assured its Allies of a cooperative effort in the Occupation, but stated where disagreements arose, “the policies of the United States will govern.”

Overseeing the war crimes trials was one of General MacArthur’s responsibilities as SCAP. Washington urged MacArthur to begin preparing for war crimes trials soon after the Instrument of Surrender was signed, and the Class BC trials began fairly quickly. The Class A trial took much longer to organize. MacArthur did not approve the IMTFE Charter and officially establish the Tribunal until 19 January 1946. The conflicts over the role of the IMTFE that arose early in the Occupation indicated that the United

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8 IMTFE, Judgment, 5.
9 MacArthur, as the Commander in Chief of the Far East Command was already in control of all American military forces in the Pacific, and was in charge after the surrender of Japan. The Moscow Conference, with the agreement of the eleven Allied nations, made MacArthur’s role as SCAP official.
States was more concerned with appearances and a successful Occupation than with the
punishment of war criminals.

In early October 1945, MacArthur requested permission of the Joint Chiefs of
Staff to proceed with a Class A trial of Hideki Tojo for the bombing of Pearl Harbor.11
A second memo to the Joint Chiefs of Staff on 31 October 1945 reiterated his request.
MacArthur also asked that the commission for such a trial be composed solely of United
States personnel, as the attack on Pearl Harbor affected only United States citizens.12
“Any criminal responsibility attached to Japanese political leaders for the decision to
wage war should be limited to an indictment for the attack on Pearl Harbor, since this act
was effected without a prior declaration of war as required by international law and
custom,” he argued.13

The Joint Chiefs of Staff disagreed. On two separate occasions in November
1945 Washington sent MacArthur directives stating that Tojo and other major war
criminals would be tried by an International Tribunal. Creating an International Tribunal
assisted the United States in maintaining its policy of allowing other Allied nations to
have input in the Occupation process. A memo on 11 November 1945 informed
MacArthur that the United States had already requested that Allied signatories of the
Instrument of Surrender nominate personnel for an International Tribunal.14

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11 WARCOS from CINCAFPA ADV, 7 October 1945. MacArthur Memorial Archives, Record Group 9,
Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
12 WARCOS (Joint Chiefs of Staff) from CINCAFPA ADV, 31 October 1945. MacArthur Memorial
Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 21 September 1945-21 June
1946.”
14 CINCAFPA ADV, CINCAFPA from Washington, 4 November 1945. MacArthur Memorial
Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June
1946” and CINCAFPA ADVANCE, CINCAFPA Manila (MacArthur), 11 November 1945. MacArthur
Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21
June 1946.”
decision also demonstrated United States’ cooperation with its Allies in the matter of war crimes trials, and MacArthur was forced to abandon his objections.

Not only did Washington disagree with MacArthur on occasion, it did not always agree with its Allies. Washington took advantage of its position to impose its will where disagreements arose. The most prominent example of this policy concerned Emperor Hirohito. The United States was not opposed to trying Hirohito as a war criminal but was not willing to raise the question of his trial until it was proven that the Occupation could proceed without him. Therefore, the United States ordered MacArthur to collect evidence but to take no action against the Emperor. MacArthur believed that Hirohito should not be tried. A 2 October 1945 memo to MacArthur from his Military Secretary, Brigadier General Bonner F. Fellers, detailed several reasons for not trying Hirohito as a war criminal. Fellers described Hirohito as the “incarnation of national spirit, incapable of wrong or misdeeds,” and stated that “to try him as a war criminal would not only be blasphemous but a denial of spiritual freedom.” The Occupation also required the services of the Emperor. On his order the military laid down its arms. Trying Hirohito as a war criminal would cause Japan’s government to collapse and might result in an uprising requiring a larger expeditionary force and prolonging the occupation. Most tellingly, Fellers concluded, “American long range interests require friendly relations with the Orient based on mutual respect, faith and understanding. In the long run it is of

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15 CINCAFPAC ADV, CINCAFPAC from Washington (Joint Chiefs of Staff), 30 November 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
16 CINCAFPAC ADV, CINCAFPAC from Washington, 22 September 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
17 Memorandum to the Commander in Chief, 2 October 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 5, Box 2, Folder 2.
paramount, national importance that Japan harbor no lasting resentment." This statement suggests that the United States was more concerned with Occupation than the punishment of war criminals and also suggests the United States counted on Emperor Hirohito to ensure that the Occupation ran smoothly. It indicated the United States’ desire to contain communism was prominent very shortly after the conclusion of the war. Japan’s possible involvement in containment, though perhaps not the extent, was also recognized. A memo from 8 October 1945 also shows that the United States was very concerned with a smooth Occupation. Early arrest of former high officials was deemed advantageous to the United States, not for the purpose of punishing them as war criminals, but to allow those who were not arrested to "attain a peace of mind to enable them to devote their abilities, such as they may be, to the task of reforming and rehabilitating the government in this country." Once officials realized arrests were complete and they no long had anything to fear, they could focus on the business at hand.19

MacArthur argued that Hirohito’s role was largely ministerial, and that to place the Emperor on trial would destroy the nation.20 MacArthur argued along the lines proposed by Fellers, and due to his recommendation, Washington decided not to try Hirohito. Other Allied countries, including Australia, objected. The Australians’ list of major war criminals contained 61 names, including that of Hirohito.21

18 Memorandum to the Commander in Chief, 2 October 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 5, Box 2, Folder 2.
19 Memorandum for Supreme Commander and Chief of Staff from George Atcheson, Jr., 8 October 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 30, Box 8, Folder 8.
20 WARCOS (Joint Chiefs of Staff) from CINCAFPAC ADV (MacArthur), 24 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
21 CINCAFPAC, CINCAFPAC ADV (For MacArthur) from Washington (Joint Chiefs of Staff), 22 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12
The majority of the Japanese public appeared to agree with MacArthur. Between November 1945 and January 1946, MacArthur received over 160 letters from the public asking him to protect the emperor and preserve the imperial system.\textsuperscript{22} In many of the letters, the writer's immediate concern was whether or not Hirohito would be tried as a war criminal. In a study of the letters, Sodei Rinjiro states that 80 letters appear to have been written in an organized effort to petition for the emperor's protection, as they all come from the same prefecture and contain similar content. The 80 letters, in wording that is very similar, stated, "You must not put the emperor on trial. Please, absolutely, do not put the emperor on trial.\textsuperscript{23}" Longer letters addressed to MacArthur contained similar sentiments. It is not known for certain if these letters influenced MacArthur in his decision to protect the emperor, or if they only cemented his commitment to keep Hirohito out of the courtroom. Their existence supports MacArthur's assertion that trying Hirohito as a war criminal could have detrimental effects on the population and possibly create anti-American sentiment in Japan.

The Republic of the Philippines also wanted Hirohito to be tried as a war criminal. The national executive of the Philippines Lawyers Guild, J. Antonio Araneta, a longtime friend of MacArthur, cited Japanese law to prove that Hirohito was the head of state, and as such, only he had the ability to initiate war. Araneta was convinced that trying the Emperor would aid MacArthur in the Occupation and allow Japan to move toward democracy. MacArthur was not swayed. Araneta appealed directly to President

\textsuperscript{23} Rinjiro, \textit{Dear General MacArthur}, 68.
Truman, who continued to back MacArthur’s decision. This tenacity suggests that the United States was more concerned with overseeing a stable occupation than with punishing war criminals or appeasing allies.

The United States was not the only party interested in protecting the Emperor. The defendants also worked to keep Hirohito’s name out of the trial. Although they did not work to clear his name for the same reasons, Hideki Tojo and Chief Prosecutor Joseph B. Keenan worked together at one point to clarify Tojo’s statements that appeared to implicate Hirohito. Keenan supported MacArthur’s decision against trying Hirohito. If Hirohito were labeled a criminal, the newfound cooperation between the United States and Japan would weaken and perhaps turn into anti-American sentiment. Tojo, on the other hand, worked to protect Hirohito because of his reverence for his Emperor. Under cross examination by Keenan, Tojo at one point remarked that Hirohito had consented, albeit reluctantly to war. He added that no one dared to act against the Emperor’s will, suggesting that had the Emperor so chosen, he could have stopped the war. This seemed to indicate Hirohito’s guilt. Keenan and Tojo both realized the gravity of the situation, and Keenan secretly appealed to Tojo through Marquis Kido to clarify his statement at the next opportunity, even if the clarification was detrimental to himself. A week after his initial statements, Tojo, again under cross examination by Keenan, stated that war was decided on in his cabinet, and on his advice and the advice of the high command, the Emperor reluctantly consented to war. Tojo went on to say that the Emperor harbored love and desire for peace, even during the war, and that Hirohito’s declaration of war on 8 December 1941 contained the sentiment that “this war is indeed unavoidable and is

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24 Maga, Judgment at Tokyo, 38-39.
25 Maga, Judgment at Tokyo, 35-36.
against my own desires." Assuming responsibility for the trial was not just a sentiment Tojo expressed in the courtroom. He made the same statements to Yoshio Kodama, another Class A suspect housed at Sugamo Prison who was released before being brought to trial. Kodama recorded a conversation with Tojo in his prison diary in which Tojo stated "if a man’s life expectancy is 50 years, then I have had 10 extra years. It will make no difference as far as my own fate is concerned whether I take responsibility for one thing or for everything. I shall therefore take the responsibility of as many things as I can. In any case, it is I who am responsible for the Pacific War." Kodama’s diary entry does not offer clues to whether the confession was a sincere claim or simply a continuing expression of his loyalty to the emperor, or a combination of the two.

Hirohito remained on the throne. The outcome of the situation proved that the United States was firmly in charge and in this instance using its authority as the leader of the Occupation to direct the outcome of the trial and pursue its own agenda. The show of power was important for the United States given rapidly increasing tensions with the Soviet Union. Assuming the leadership role and taking a strong stance during the Tokyo Trial let the remaining Allied countries know that the United States occupied a position of such power that it did not have to bend to the will of their Allies in the post war world but was strong enough to dictate how the recovery of Japan should progress.

THE IMTFE CHARTER: ORGANIZATION

MacArthur received a message from the Joint Chiefs of Staff (JCS) on 12 September 1945 expressing President Truman’s desire to “proceed, without avoidable

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27 Kodama, *Sugamo Diary*, 66-68.
delay, with the trial before appropriate Military Courts or Tribunals and the punishment of such Japanese War Criminals as have been or may be apprehended.\textsuperscript{28} In reality, organizing the tribunal and appointing its members was a long and drawn out process and eight months would pass before the Class A trial of high ranking Japanese officials at Tokyo began. In the months between the 12 September memo and the convening of the Class A trial on 3 May 1946, MacArthur appointed members to the tribunal, set the guidelines for the trial, and prepared for its start.

MacArthur officially established the IMTFE on 19 January 1946 for “the trial of those persons charged individually or as members of organizations or in both capacities with offences which include crimes against peace.”\textsuperscript{29} On the same date he approved the Charter for the IMTFE which outlined the jurisdiction and general provisions of the tribunal, defined the right of the accused to a fair trial, detailed the powers of the tribunal, the process of the trial, and the right of the tribunal to pass judgment and sentences upon the defendants. The Charter determined the basic organization of the Tribunal, allowing for representatives from the United States, Great Britain, France, China, Australia, New Zealand, the Soviet Union, the Netherlands, and Canada.\textsuperscript{30}

One of the members of the Tribunal would serve as President and act as moderator during the proceedings.\textsuperscript{31} The US State Department requested designees from the Allied countries for possible appointment to the tribunal. The designees were to be

\textsuperscript{28} JCS to Douglas MacArthur, 12 September 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
\textsuperscript{29} \textit{Initial Post Surrender Policy for Japan, Part II: Allied Authority}, 1. MacArthur Memorial Archives, Norfolk, VA. \textit{Politics of Japan September 1945-September 1948}. Report of Government Section, SCAP: 423-427. Crimes against peace were considered the most serious war crime in the post war era. Only those charged with Class A crimes were considered to be major war criminals.
\textsuperscript{31} SCAP, \textit{Charter}, Article 3a.
military officers or qualified civilians, preferably with the ability to speak English. The Soviet Union did not adhere to this request, and sent a justice who did not speak English, perhaps to defy the United States and challenge its leading role during the trial.

MacArthur appointed judges to the tribunal from the designees. Only six members of the Tribunal were required to be present to convene court proceedings, and a majority vote by members present was necessary in order to make decisions, including convictions and sentences. A tie vote would be decided by the President of the Tribunal. Unlike Nuremberg, no alternates were provided to the judges in case of absence, and any judge who missed court sessions continued to be able to participate in later proceedings unless he declared himself unfit in open court. Several judges were absent for lengthy periods during the trial including the Tribunal President, though none ever declared himself unfit to continue with court proceedings. Each judge was responsible for familiarizing himself with the testimony given during his absence. A judge’s absence could be a disadvantage to the defendants if the judge missed key testimony, but given the number of justices on the bench at Tokyo it was not practical to house 11 additional alternate justices. Timothy Maga stated the “strange” rule reflected the expectation of a fast moving trial. The defense opposed the rule, as a rapid trial was not in the best interests of its clients. The tribunal ignored the objection, which became moot since the trial proceeded so slowly that it was possible an absent justice would not miss a great deal of testimony.

32 Washington to General Headquarters Tokyo & General Headquarters, 25 October 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
33 SCAP, Charter, Article 4ab.
34 SCAP, Charter, Article 4c. The Charter offers no further information on absent judges, and does not allow for the defense to object if a judge missed a considerable length of time. The decision to withdraw from the bench was left entirely to the justice.
35 Maga, Judgement at Tokyo, 43.
The Charter allowed for SCAP to appoint a Chief of Counsel, and any nation with which Japan was at war was able to appoint Associate Counsels to assist the Chief.\textsuperscript{36} This stipulation supported the argument that the tribunal was biased, since it was composed only of enemy and victim nations. Article 9 addressed the right to a fair trial for the accused. It required each defendant receive a copy of the indictment in a language he understood in time to allow for an adequate defense. It also mandated English and Japanese as the official languages of the trial proceedings, and allowed for translations of documents as needed or requested. It was important that each defendant understood the court proceedings and the charges against him. Guaranteeing the defendants trial proceedings in their native language showed that the court was committed to carrying out fair justice for the accused and was not simply rushing through the trial in order to exact punishment, and demonstrated that democratic ideals trumped the desire for revenge. It also allowed the defendant to prepare the best possible defense when he understood all aspects of the court proceedings. The court remained committed to this right even though translation difficulties between English and Japanese led to problems and often slowed court proceedings while interpreters struggled to appropriately translate between the two languages. By adhering to the rule throughout the trial, the Allies demonstrated commitment to the rights of the defendants in a court of law.

Each defendant had the right to select his own defense counsel, and if he chose not to exercise that right the tribunal could appoint his counsel. Adequate defense counsel was an important idea in western jurisprudence and by ensuring the defendant proper representation the Tokyo Trial would be viewed as treating the accused fairly and

\textsuperscript{36} SCAP, \textit{Charter}, Article 8ab. By granting SCAP the authority to appoint the Chief of Counsel, this responsibility was directly given to the Americans and ensured that the United States had control over this role.
allowing him the best possible opportunity to present his case. The accused also had the right to request witnesses or documents to aid in his defense, another example of allowing the defendant ample opportunity to present his argument. The defendant had to submit a written application to the tribunal explaining where the evidence requested was located, as well as how the evidence was relevant to the defense. If the tribunal approved the application, it would provide assistance in obtaining it. Assistance in obtaining evidence should have signaled fair treatment, although this was not always the case.

The rules of evidence for the Tribunal favored the prosecution however, making its job to convict the defendants simpler. The Charter provided ground rules for evidence in Section IV, Powers of Tribunal and Conduct of Trial. In Article 13, the Charter stated that "the Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible."38 This allowed the United States to easily accomplish its goal of punishing major war criminals, but undermined the desire to demonstrate democratic principles and fair trials. The American civilian perspective of rules of evidence was more stringent and would not have allowed many of the items listed in the Charter into evidence. The list of admissible evidence clearly demonstrates the failure to adhere to common technical rules. "Regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of

37 SCAP, Charter, Article 9a-e.
38 SCAP, Charter, Article 13a. By allowing the Tribunal to adopt expeditious and non-technical procedure, the Charter does seem to support the defense's argument as stated by Maga that the Tribunal emphasized speed over justice. Maga, Judgement at Tokyo, 43.
any government,” any document was admissible.39 Also acceptable were those which
appeared to have been signed or issued by the International Red Cross, doctors, medical
service personnel, investigators, intelligence officers, or “any other person who appears
to the Tribunal to have personal knowledge of the matters contained in the report.”40
Affidavits, diaries, letters, and sworn or unsworn statements that appeared to have
information related to the charge were admissible, as were copies if the original
document was unavailable.41 One of the most valuable pieces of evidence used by the
prosecution was the diary of Koichi Kido, Hirohito’s advisor and Lord Keeper of the
Privy Seal. Since Kido kept record of the years prior to and during the war, and since
those records contained information related to the charges, the diary was admitted as
evidence. Finally, the Tribunal did not require proof “of facts of common knowledge,
nor of the authenticity of official government documents and reports of any nation nor of
the proceedings, records, and findings of military or other agencies of any of the United
Nations.”42 While the United States, some Tribunal members, and even some Japanese
argued that the Tokyo Trial was fair and just, the disregard for technical rules of evidence
did seem to bias the proceedings and aid the prosecution in making its case.

It is easy to criticize the tribunal for the relaxed rules of evidence; however the

IMTFE occupied a unique position. As a military court, it followed different rules than a
civilian court. Yet in its attempt to model western jurisprudence for the Japanese and at
the same time consider the problems associated with an international tribunal and the

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39 SCAP, Charter, Article 13c1.
40 SCAP, Charter, Article 13c2. The Charter does not require proof that these documents be signed by Red
Cross or medical personnel and instead relies on the justices to make the determination.
41 SCAP, Charter, Article 13c3-5.
42 SCAP, Charter, Article 13d. The justices again are given the responsibility of determining whether or not
documents submitted into evidence are authentic. These rulings rely on the judges refraining from any
bias on their part and carefully examining submitted evidence. It presents a disadvantage to the defendants
since they could not be guaranteed that the judges were free from bias in this process.
destruction of evidence, the tribunal was forced to alter the rules of evidence. While the relaxed rules did aid the prosecution, the criticism of the court's bias against the defense regarding evidence could stem from Webb's obvious contempt for the defendants.

A brief section of the Charter outlined the trial proceedings. After the indictment, the accused made his plea, and the prosecution delivered opening statements. The prosecution and defense then made their cases, and the Tribunal delivered the judgment and sentences after deliberation. The Tribunal was able to impose any sentence it deemed just, including death, if the defendants were convicted. Sentences could not be carried out until approved by SCAP and SCAP could reduce or alter sentences, but not increase their severity. The review process introduced a mechanism to ensure the trials did not simply sentence all defendants to death to extract revenge for Japan's actions during the war.

KEY PLAYERS: JUDGES, PROSECUTORS AND APPOINTMENT CONTROVERSY

While waiting for the nominations of judges from the Allied nations, MacArthur established the International Prosecution Section (IPS) for the IMTFE. One of his first appointments was Joseph B. Keenan as the Chief Prosecutor for the IPS. Keenan worked in the Department of Justice from 1933 to 1939 and at one point was the Assistant Attorney General of the United States in charge of the Criminal Division. He later served as the Assistant to the Attorney General. At the time of his appointment as Chief

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43 SCAP, Charter, Article 15a-h.
44 SCAP, Charter, Article 16.
45 SCAP, Charter, Article 17. This prevented the reviewing authority from increasing sentences based on his personal opinion.
Prosecutor of the IMTFE, Keenan had a private practice in Washington. President Truman's Executive Order No. 9660 established Keenan's responsibilities as Chief Prosecutor on 29 November 1945. The order allowed Keenan to "select and recommend...necessary personnel to assist him in the performance of his duties" as well as to "cooperate with, and to receive the assistance of, any foreign Government to the extent deemed necessary by him for the accomplishment of his duties."\(^{47}\)

A slow response from other Allied nations involved in the trial process delayed the Tribunal. In October, governments were asked to provide designees, but it was not until December that MacArthur received a message asking for further information including the number of judges that would sit on the Tribunal, their rank, the rules and jurisdiction of the court, and the organization of the prosecuting staff. Although Washington asked MacArthur for his opinion on these matters, the JCS provided their own "politically desirable" suggested answers: the Tribunal would consist of judges nominated by the Allied government, as well as one alternate; each judge would hold the rank of Major General or its equivalent; the jurisdiction of the court would only cover Class A war criminals; and the rules of the court would be modeled after Nuremberg. The original Charter called for nine members to sit on the Tribunal, although in acknowledgement of international cooperation, the United States later amended the charter to add a representative from India and the Philippines.\(^{48}\)

\(^{46}\) CINCPAC ADV (MacArthur Personal) from Washington (Secretary of War), 2 November 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 "Radiograms 12 September 1945-21 June 1946."

\(^{47}\) Executive Order 9660, the White House, 29 November 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder War Crimes 1-110.

Finally, each government would nominate one associate prosecutor to assist the Chief Prosecutor. The JCS expressed their desire for the trial to begin on 15 January 1946 and set a 1 January 1946 deadline for nominations from the Allied nations. MacArthur, with input from Keenan, made only a few changes to the recommendations provided by the JCS. He suggested that no alternates be provided, as "they will tend to embarrass rather than facilitate the action, due to the many problems of accommodation, transportation, and other local matters." MacArthur's memo also included a stipulation that he, as SCAP, would designate the President of the Tribunal, as well as establish the courts and its rules of procedure, including the admissibility of evidence. MacArthur pushed the start date of the trial back to 1 February 1946 and requested that no publicity be given to the trials until the indictment was delivered. Allied nations began to provide nominations after they received the information on the organization of the tribunal.

A disagreement over the appointment of the United States representative indicated that the Tokyo Trial was not held in high regard. On 18 January 1946, the day before MacArthur established the IMTFE, Keenan recommended that the JCS nominate Willis Smith, the President of the American Bar Association to the IMTFE. President Truman however, designated the Chief Justice of the Supreme Judicial Council of Massachusetts.

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49 CINCAF PAC ADV (MacArthur) from Washington (JCS), 20 December 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 "Radiograms 12 September 1945-21 June 1946."

50 WARCOS (JCS) from CINCAF PAC ADV, 22 December 1945. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 "Radiograms 12 September 1945-21 June 1946."

51 Delegates were as follows: Sir William Webb, Australia; Justice E. Stuart McDougall, Canada; Justice Henri Bernard, France; Justice Bernard Röling, The Netherlands; I. M. Zaryanov, the Soviet Union; Lord William Patrick, United Kingdom; Justice John Higgins, United States; Judge Delfin Jaranilla, the Philippines; Justice Radhabinod Pal, India.

52 WARCOS (JCS) from CINCAF PAC ADV, 18 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box, 159, Folder 1 "Radiograms 12 September 1945-21 June 1946."
John P. Higgins as the American representative. It is unclear why Truman was so intent on appointing Higgins. Brackman states that the reasons for the appointment were "lost in the murky Democratic politics of the era." Keenan swiftly appealed to the United States Attorney General, as well as to the Judge Advocate General (JAG) in Washington. He urged the nomination of Higgins to be reconsidered, as the appointment "would not fit in with any of the other appointments being made by the Allied Nations from the standpoint of prestige and rank." Keenan wanted someone better known nationally and opposed Higgins since he was known only within Massachusetts. He explained that MacArthur intended to appoint the American judge as President of the Tribunal, which made a more prestigious and well known American nominee necessary. Keenan’s sentiment was much the same in his message to the JAG, and he made several other suggestions for nominees if Willis Smith were unavailable. Washington ignored Keenan’s advice however, and President Truman appointed Higgins. Disappointed with Truman’s choice, MacArthur chose the Australian Webb as President of the Tribunal. Higgins would not only fail to match the rank of the justices from the other Allied countries in Keenan’s opinion, but he would place the United States in an awkward position less than a month after the prosecution began making its case by

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53 CINCAFPAC ADV (Keenan) from Washington (JAG), 20 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
54 Brackman, *The Other Nuremberg,* 63.
55 Tom C. Clark, Attorney General, Washington DC from CINCAFPAC ADV (Keenan), 21 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
56 Brackman, *The Other Nuremberg,* 64.
57 Tom C. Clark, Attorney General, Washington DC from CINCAFPAC ADV (Keenan), 21 January 1946. JAG, Washington, from CINCAFPAC ADV (Keenan), 21 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
58 CINCAFPAC ADV (Keenan) from Washington (SERVEJAG), 22 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 1 “Radiograms 12 September 1945-21 June 1946.”
requesting to be relieved of his assignment. Stating that he was assured by the Attorney General that his responsibilities on the Tribunal would be complete in time to allow him to return to the Superior Court of Massachusetts and resume his duties as Chief Justice, Higgins submitted his resignation. The Office of Civil Affairs in the War Department urged him to reconsider his resignation, but ultimately he returned to the United States and Major General Myron C. Cramer was appointed to replace Higgins. He served for the remainder of the trial. If Higgins were in fact unqualified to serve on the tribunal, Justice Röling felt that Cramer was not much of an improvement and stated that Cramer was "not a very great authority." Trumans' failure to appoint a high ranking justice and Higgins's disregard for his responsibilities as part of the IMTFE suggest that Washington did not consider the trial highly important or fully understand the complex procedure it was undertaking in the trial.

Yuki Takatori offers another view on the Higgins debacle. Takatori described Higgins as very active politically, civically, and in his community, a man who accomplished much in life. In 1937 at age 44, Higgins was the youngest man to become the Chief Justice of the Massachusetts Superior Court. Takatori attributes Keenan's surprise and anger at the appointment of Higgins to a break down in communication. The Attorney General's Office sent Keenan a list of possible nominees, which Keenan never

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60 John P. Higgins to General Douglas MacArthur, 21 June 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 5, Box 2, Folder "April-June 1946."
61 CINCAFPAC from Washington (WDSCA), 25 June 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 2 "Radiograms 25 June 1946-17 November 1948."
62 WDSCA from SCAP (MacArthur), 6 July 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 2 "Radiograms 25 June 1946-17 November 1948."
64 Yuki Takatori, "The Forgotten Judge at the Tokyo War Crimes Trial," Massachusetts Historical Review 10 (2008), 118.
received. Keenan then took it upon himself to nominate Smith and became upset when his suggestion was ignored. Keenan felt that Higgins lacked the experience necessary to participate in the trial. Higgins however proved himself capable in the short time he was in Tokyo and won the respect of the President of the Tribunal William Webb. Webb even sought advice from Higgins on trial related matters. The judges' relationship and Webb's respect for Higgins was an indication that Higgins was knowledgeable, competent, and well suited to sit on the bench.

Clearly, Higgins lost interest in the trial by mid-June, and once it was clear that court proceedings would continue well past the promised six month mark, he began to consider leaving Tokyo. He felt that a prolonged absence on his part was unfair to Massachusetts, which was his primary concern. It also appears that Higgins began to view the trial as a failure and he perhaps did not want to be associated with it. In his diary, Higgins records the problems he saw with the trial, including the appointment of Keenan, who he considered a second rate attorney, incompetent American defense lawyers, and a personal belief that "the Japanese are being railroaded." The issues pointed out by Higgins are some of the most scathing criticisms that arose after the trial.

Takatori believes that Higgins’s resignation completely changed the outcome of the Tokyo Trial. Cramer, Higgins’s replacement, was a hanging judge who voted for the death penalty for nine defendants, seven of whom were hanged. Higgins, a liberal judge possessing a negative view of the trial, would have most likely voted against the death penalty, which would have saved at least one defendant from execution. Takatori also

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66 Takatori, “The Forgotten Judge at the Tokyo War Crimes Trial,” 124. According to many accounts, Webb was not any easy man to get along with, and Takatori states that Higgins was the only person at the trial who got along with him. Their friendship continued even after Higgins resigned.
believes Higgins might have written a separate opinion or dissent, which would have raised serious questions about the goals and legal integrity of the trial.\textsuperscript{68} The entries in Higgins’s diary raise questions about the real focus of the United States during the trial. He certainly recorded a feeling that the US was not as invested in the trial as it claimed. Whatever the reason Higgins chose to resign, whether it was over concern for his home court or the issues surrounding the trial, Yuma Totani states that he would have been unable to resign so easily if the United States had attached real importance to the Tokyo Trial.\textsuperscript{69}

The appointment of American prosecutors to the IPS also indicated the United States did not necessarily send their most capable to Tokyo. The original staff was composed of thirty nine Americans who arrived in Tokyo in December 1945. American defense lawyers were required since Japanese lawyers were unfamiliar with the common law court procedures used at the trial. In order to provide the defendants with a proper defense, American attorneys familiar with these practices were necessary.\textsuperscript{70} As appointments from other Allied nations trickled in, the IPS grew into a massive multinational force. At its peak, over five hundred lawyers, stenographers, and clerical staff worked for the IPS. Not all Allied countries sent teams as large as the United States’, although the large prosecution team could have been another tactic to indicate strength and perhaps dedication to the cause, since so many American attorneys were devoted to the trial. Each additional Allied country provided at least one lead prosecutor. Of the eleven lead prosecutors, Arthur S. Comyns-Carr from the United Kingdom and Justice Alan J. Mansfield from Australia played the largest role in the IPS next to

\textsuperscript{68} Takatori, “The Forgotten Judge at the Tokyo Trial,” 136.
\textsuperscript{69} Totani, \textit{The Tokyo Trial and Beyond}, 41.
\textsuperscript{70} Takatori, “The Forgotten Judge at the Tokyo Trial,” 127.
Keenan. Comyns-Carr and Mansfield assisted the IPS in completing investigations, determining defendants, and completing the final draft of the indictment. Comyns-Carr, a former member of the British Parliament, worked along with Mansfield who had already investigated Japanese war crimes in New Guinea. The appointees from the remaining Allied Nations were just as impressive.

In contrast to some of his international colleagues, Keenan did not possess any knowledge of the history of Asia and was not well versed in international law. Rumored to be a drunkard, Keenan was flamboyant and controversial, and often worked himself into a frenzy in the courtroom. Both the prosecution and defense questioned his appointment. A prosecutor on his own staff stated that Keenan did not measure up to the job, while Beverly Coleman, chief of the American Defense Counsel for a short time, stated that Keenan “was a good lawyer, but he was not the man to handle a trial like this.”

Even many on the American prosecution team admitted that the teams from the other Allied countries were of a higher caliber. The prosecutors from the other Allied countries were highly experienced, and many had distinguished careers in their home countries. The high caliber appointments by the other Allied nations as compared to the United States, coupled with the embarrassment over the resignation of Higgins reflected poorly on the United States and its commitment to the Tokyo Trial.

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72 See Brackman, *The Other Nuremberg* for a complete description of the remaining Allied prosecutors and their roles prior to the trial.
73 Brackman, *The Other Nuremberg*, 54-55.
74 Brackman, *The Other Nuremberg*, 61.
PROBLEMS WITH THE DEFENSE

At the Tokyo Trial, there were clear indications of favoritism toward the prosecution. The defense experienced myriad problems, including translation difficulties and an inadequate staff. Favoring the prosecution facilitated conviction and punishment of Japan's major war criminals. While those in charge were punished Japan could focus on rehabilitating and rebuilding itself to join the global community.

MacArthur took these lack of fairness complaints seriously and handled many himself since he wanted to create a positive atmosphere for his Occupation Government. He was particularly concerned about a complaint that the defense counsel had been established only for propaganda purposes and not actually to accomplish anything during the trial. The defense was well aware of the disadvantages their team faced and felt as though it existed merely for show, rather than actually to try to prove the innocence of its clients.

Problems for the defense counsel began early in the trial. On 31 May 1946, MacArthur received a lengthy memo and eight resignation letters from American members of the defense team which was at the time composed of 27 attorneys and 42 administrative assistants. Penned by Captain Beverly Coleman, the memo outlined the major issues facing the defense and complained the defense “is presently without any organizational connection” and lacking “any official status or recognition the group can not function administratively nor can vital and essential activities be either undertaken or accomplished.” Coleman decried the lack of organizational structure and claimed to try to impose order to provide “the Japanese defendants with American lawyers of suitable experience and qualifications to assure the Japanese defendants proper representation and

75 Maga, Judgment at Tokyo, 53-54.
adequate defense." Coleman also found fault with the assignment of the defense to the IMTFE. The IPS fell under the authority of SCAP, and Coleman argued that SCAP should oversee the defense as well. SCAP insisted the defense should function under the IMTFE, which refused to accept the defense as an agent of the court. Coleman concluded by explaining that the present situation would "preclude any effective or adequate defense of the accused, and further, will bring discredit upon all of the members of the group, upon the Tribunal, upon the authority which provided these counsel to the Japanese defendants, and to American lawyers generally." The American attorneys' resignation letters varied in length but most reflected Coleman's sentiments. The letters explained they could not "honorably continue voluntarily to be associated with an enterprise which can not be effectively or properly prosecuted." These resignations indicate that the defense attorneys took their appointments seriously and were willing to prepare a proper defense for the Japanese suspects. The United States however, in its attempt to meet its occupation goals was concerned only with appearances and not necessarily providing the Japanese with a suitable defense. The large contingent of lawyers would suggest that the United States was fulfilling its promise to provide an adequate defense for the Japanese defendants. However, in his diary, Justice Higgins described the "nitwit" lawyers who fought amongst themselves and only sought to use the trial as a career move and collect a solid paycheck from the US government. Higgins considered the appointed lawyers to be unskilled and an obstacle to a decent defense.77

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76 SCAP thru Chief of Legal Section, SCAP, American Defense Activities, 31 May 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 5, Box 1, Folder 2 "Master File November 1945-March 1946."
77 Takatori, "The Forgotten Judge at the Tokyo Trial," 129-130.
These lawyers challenged Coleman and his authority and caused the rift that led to Coleman's resignation.

MacArthur replied to each of the resignations personally, urging the attorneys to reconsider their withdrawal for several reasons. First, he stated that as SCAP, his duties were to "establish the Tribunal, to promulgate its charter, and to establish the International Prosecution." The organization of the tribunal, of IPS, and the conduct of the trials were beyond his purview, and after the arraignment of the defendants SCAP's power was limited to reviewing the case upon its conclusion. MacArthur explained his only responsibility regarding the defense was to make lawyers available to the suspects and make arrangements for the defense team's equipment and working and living quarters. Second, MacArthur argued that the resignations were difficult to justify since the difficulties broached in the memo and resignation letters were at that point only speculative since they were submitted only shortly after the trial began. He stated that "it is believed that until such conditions actually develop, your application is based upon conjecture and that the prejudice you thereby throw on the entire proceeding is not warranted at this time." Despite MacArthur's intervention, Coleman and the entire Navy contingent of the defense team followed through on their resignations.

The problems for the defense did not end with its organizational woes. The attorneys complained of a shortage of interpreters and assistants, an issue that affected their ability to prepare their case. While the IPS had 102 translators, the defense counsel

78 John W. Guider thru Chief Legal Section, SCAP from General Headquarters (hereafter GHQ), SCAP, 2 June 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 5, Box 1, Folder 2 “Master File, November 45-December 46.”
79 John W. Guider thru Chief Legal Section, SCAP from General Headquarters (hereafter GHQ), SCAP, 2 June 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 5, Box 1, Folder 2 “Master File, November 45-December 46.”
80 Brackman, The Other Nuremberg, 115.
had three. It faced a shortage of typists and clerks, forcing the defense team to work late hours and weekends to try to keep up with the paperwork. Defense attorneys such as Ben Bruce Blakeney, who was bilingual, often worked at translating documents at the expense of preparing his client’s case. Several times the defense attorneys were forced to ask the court for a recess because they were unprepared to present or move forward with their case due to equipment and personnel problems.81

Favoritism toward the prosecution was also shown during courtroom proceedings. R. John Pritchard, the senior editor and compiler of the Tokyo War Trial Project, stated that “much of what they did offer in evidence was rejected by the court for trivial or specious reasons” and the rulings of the tribunal concerning the provenance of documents, hearsay, cumulative evidence...deprived the defence of a great deal of valuable evidence.” This is likely due to the bias shown toward the defense by the bench, particularly in Webb’s case. Webb often openly expressed his disgust and contempt toward the defendants, and as President of the tribunal he determined court proceedings. The Allied governments offered a great deal of assistance to the prosecution in securing documents and evidence, but often restricted similar efforts by the defense counsel. Even though the IMTFE Charter stipulated that the defense would receive assistance, the trial records support the defense’s contentions.82 The length of the trial may have contributed to this restriction. By the time the defense presented its case, the trial had dragged on much longer than anticipated and many of the participants had lost interest. In order to speed up the proceedings, the bench was much stricter on the admission of evidence. Though the Allies claimed they were unbiased and the IMTFE Charter provided for the

81 Brackmann, The Other Nuremberg, 113-115, 309-310.
rights of the accused, the actions of the Allies were hypocritical. The court looked to rush through the trial and many involved lost interest when the trial dragged on. The bench constantly favored the prosecution, and the defense faced enormous obstacles in preparing its case. The United States did not model the democratic principles it hoped to convey to the Japanese, but rather made a half-hearted attempt to provide an example of western style justice while preoccupied with Cold War tensions.

THE DEFENDANTS AND THE INDICTMENT

Although all parties were not in place in January 1946, those present participated in writing the indictment and identifying the Class A defendants, approved by MacArthur. The indictment filed on 29 April 1946 charged twenty-eight Japanese who had occupied high level government and military posts between 1928 and 1945, as shown in Table 1. Each defendant had held multiple offices and participated in multiple phases of the war, allowing the IPS to cover a wide range of atrocities while at the same time limiting the number of defendants. Among the defendants were former members of the cabinet, the diplomatic corps, the Privy Council, the army general staff, and the Lord Keeper of the Privy Seal. The men who occupied these positions had been responsible for overseeing POW camps, organizing Japan’s educational system, and publishing propaganda. They had organized the alliance among Japan, Germany and Italy and planned major military movements, such as the occupations of Manchuria and Korea and the attack on Pearl Harbor. Solis Horwitz claimed that these defendants were chosen by

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83 SCAP (for Atcheson/Keenan) from Washington, 20 January 1946. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder “Radiograms 12 September 1945-21 June 1946.”
84 Totani, The Tokyo War Crimes Trial, 64-65 and Piccigallo, The Japanese on Trial, 14-16.
85 Totani, The Tokyo War Crimes Trial, 64-65.
the IPS not only as representatives of high level government and military organizations
during Japan's aggressive phase, but also because they could be charged with crimes
against peace, they held positions of leadership, and their chances for acquittal were
slim.\(^{86}\)

<table>
<thead>
<tr>
<th>Defendant</th>
<th>Roles</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sadao Araki</td>
<td>Former Minister of War and Minister</td>
<td>Organized the Japanese school system along military lines.</td>
</tr>
<tr>
<td></td>
<td>of Education.</td>
<td></td>
</tr>
<tr>
<td>Kenji Doihara</td>
<td>Former commander of the Kwantung</td>
<td>Ran POW camps in several locations, such as Malaya,</td>
</tr>
<tr>
<td></td>
<td>Army and member of the Supreme War</td>
<td>Sumatra, Java, and Borneo.</td>
</tr>
<tr>
<td></td>
<td>Council.</td>
<td></td>
</tr>
<tr>
<td>Kingoro Hashimoto</td>
<td>Assisted in staging the Mukden Incident, leading to war with China.</td>
<td>Published racist propaganda and helped sway Japanese public opinion in support of the war.</td>
</tr>
<tr>
<td>Shunroku Hata</td>
<td>Former Minister of War.</td>
<td>Helped plan Japan's invasion of China. Hata commanded troops who committed atrocities against Chinese civilians.</td>
</tr>
<tr>
<td>Kiichiro Hiranuma</td>
<td>Held many political positions in the Emperor's Cabinet, including Premier and President of the Privy Council.</td>
<td>Was a well known political figure in Japan.</td>
</tr>
<tr>
<td>Koki Hirota</td>
<td>Ambassador to the Soviet Union,</td>
<td>During his time as Foreign Minister the Rape of Nanking occurred.</td>
</tr>
<tr>
<td></td>
<td>Premier, and Foreign Minister.</td>
<td></td>
</tr>
<tr>
<td>Naoki Hoshino</td>
<td>Former Chief of Financial Affairs,</td>
<td>Played a role in Japan's occupation of Manchuria.</td>
</tr>
<tr>
<td></td>
<td>Minister without Portfolio, and Chief Cabinet Secretary.</td>
<td></td>
</tr>
<tr>
<td>Seishiro Itagaki</td>
<td>Former Chief of Staff, Minister of War, and member of the Supreme War Council.</td>
<td>Controlled POW camps in Java, Sumatra, Malaya and Borneo. Soldiers under his command committed atrocities against POWs and civilians.</td>
</tr>
</tbody>
</table>

Table 1: Class A Defendants and their Roles and Responsibilities

\(^{86}\) Horwitz, "The Tokyo Trial," 495-496.
<table>
<thead>
<tr>
<th>Defendant</th>
<th>Roles</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Okinori Kaya</td>
<td>Former Minister of Finance.</td>
<td>Supported drug trafficking in China, exploited China’s natural resources.</td>
</tr>
<tr>
<td>Koichi Kido</td>
<td>Lord Keeper of the Privy Seal.</td>
<td>Kido was close to the Emperor during the war.</td>
</tr>
<tr>
<td>Heitaro Kimura</td>
<td>Former Chief of Staff, Vice Minister of War and member of the Supreme War Council.</td>
<td>Approved the brutalization of Allied POWs and was the field commander in Burma while the Death Railway was built.</td>
</tr>
<tr>
<td>Kuniaki Koiso</td>
<td>Former Vice Minister of War, Chief of Staff, Army Commander and Premier.</td>
<td>Koiso was brutal to Korean civilians during the Japanese occupation and was aware of the atrocities in POW camps during his time as Premier.</td>
</tr>
<tr>
<td>Iwane Matsui</td>
<td>Commander of the China Expeditionary Force.</td>
<td>The troops under Matsui’s command committed atrocities during the Rape of Nanking.</td>
</tr>
<tr>
<td>Yosuke Matsuoka</td>
<td>Former Foreign Minister.</td>
<td>Outspoken supporter of Japan’s expansionist tendencies and organized the Axis Alliance with Germany and Italy.</td>
</tr>
<tr>
<td>Jiro Minami</td>
<td>Former Minister of War, member of the Supreme War Council, and member of the Privy Council.</td>
<td>Controlled Korea during the Japanese occupation.</td>
</tr>
<tr>
<td>Akira Muto</td>
<td>Former Director of the Military Affairs Bureau and Army Commander.</td>
<td>In charge of troops who committed atrocities during the Rape of Nanking and the Rape of Manila. Muto also ran POW camps in Sumatra.</td>
</tr>
<tr>
<td>Osami Nagano</td>
<td>Former Navy Minister, Navy Chief of Staff, and Naval Advisor to the Emperor.</td>
<td>Helped plan the attack on Pearl Harbor.</td>
</tr>
<tr>
<td>Takasumi Oka</td>
<td>Former Chief of the Naval Affairs Bureau and Vice Minister of the Navy.</td>
<td>Assisted in planning the attack on Pearl Harbor. Oka’s bureau issued orders for the transportation of Allied POWs on hellships and to shoot any survivors of downed Allied ships.</td>
</tr>
</tbody>
</table>

Table 1 Continued
<table>
<thead>
<tr>
<th>Defendant</th>
<th>Roles</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shumei Okawa</td>
<td>Did not hold any official government positions.</td>
<td>Played a role in the Mukden Incident, and was an early supporter of the war.</td>
</tr>
<tr>
<td>Hiroshio Oshima</td>
<td>Former Ambassador to Germany.</td>
<td>Helped create the Axis Alliance with Germany and Italy.</td>
</tr>
<tr>
<td>Kenryo Sato</td>
<td>Former Chief of the Military Affairs Bureau and Army Commander.</td>
<td>Approved orders on the treatment of POWs and civilians who worked on the Death Railway.</td>
</tr>
<tr>
<td>Mamoru Shigemitsu</td>
<td>Former Ambassador to China, Great Britain, and the Soviet Union.</td>
<td>Actually desired an end to the war, but the Soviet Union insisted on his arrest as a war criminal.</td>
</tr>
<tr>
<td>Shigetaro Shimada</td>
<td>Former Commander of the China Fleet, Navy Minister, and member of the Supreme War Council.</td>
<td>Authorized the attack on Pearl Harbor. He also commanded naval units that committed atrocities against Allied POWs.</td>
</tr>
<tr>
<td>Toshio Shiratori</td>
<td>Former Ambassador to Italy and advisor to the Foreign Minister.</td>
<td>Assisted Oshima in creating the Axis Alliance with Germany and Italy.</td>
</tr>
<tr>
<td>Teiichi Suzuki</td>
<td>Former Chief of the China Affairs Bureau and political advisor.</td>
<td>Played a role in drug trafficking in China and was aware of the use of POWs and civilians as slave labor.</td>
</tr>
<tr>
<td>Shigenori Togo</td>
<td>Former Ambassador to Germany and the Soviet Union.</td>
<td>Prior to the attack on Pearl Harbor, Togo was in charge of peace negotiations with the United States.</td>
</tr>
<tr>
<td>Hideki Tojo</td>
<td>Former Chief of Staff, Vice Minister of War, Minister of War, and Premiere.</td>
<td>Controlled the Ministries of Foreign Affairs, Home Affairs, and Education, allowing him almost dictatorial rule.</td>
</tr>
<tr>
<td>Yoshijiro Umezu</td>
<td>Former Vice Minister of War and Army Chief of Staff.</td>
<td>A well known and feared leader in Japan and key member of the militaristic army clique that assumed control.</td>
</tr>
</tbody>
</table>
Only twenty-five of the twenty-eight indicted sat through the trial and received sentences as Shumei Okawa was declared mentally unfit, and Yosuke Matsuoka and Osami Nagano died during the trial of tuberculosis and natural causes, respectively.\(^8\)

The indictment against the 28 Japanese wartime leaders described the conspiracy between Germany, Italy, and Japan to dominate and exploit the rest of the world and threaten basic principles of liberty.\(^8\) According to the indictment, the defendants took advantage “of their power and their official positions and their own personal prestige and influence” and violated international law as well as Japan’s treaty obligations.\(^8\) All of the defendants pled not guilty to the charges filed against them, and court proceedings for the Tokyo Trial finally began on 3 May 1946.

Charges against the defendants were organized into three groups. Group One, or Class A crimes, contained counts one through thirty-six. These counts cover aggressive warfare and the execution of conspiracy for military, naval, political, and economic domination by Japan over various areas of East Asia, the Pacific and Indian Oceans, as well as accounts of aggression against the United States, the United Kingdom, Australia, New Zealand, Canada, India, the Philippines, the Netherlands, France, and the Soviet Union. According to Brackman, the main theme of the indictment was the domination of foreign and domestic policy in Japan by a “criminal militaristic clique.”\(^9\) Therefore, the counts in Group One began in 1928 with actions taken by Japan against the Republic of China, up to the end of the war in 1945 and thus covered all of Japan’s actions during that

\(^8\) Brackman, *The Other Nuremberg*, 93, 406-413.
\(^8\) International Military Tribunal for the Far East, *Indictment*, Harry S. Truman Presidential Museum and Library
\(^8\) IMTFE, *Indictment*, 1.
\(^9\) Brackman, *The Other Nuremberg*, 84.
time period. This way any actions taken by Japan during those years could be used during the trial. The attack on Pearl Harbor as well as other attacks on 7 December 1941 in the Pacific were included in this group. The counts in Group One formed the basis for the Tokyo Trial. Without these charges, the tribunal had no jurisdiction.

Twenty-three of the thirty-six counts charged all of the defendants, while the remaining counts cited specific defendants for particular actions, such as the attacks on 7 December 1941. These thirty-six counts cover ten phases of the war. Some of the earliest counts cover aggression in Manchuria beginning in 1931, and military aggression throughout China beginning in 1937. Economic aggression, corruption, and coercion in China and other parts of Asia were also included. Other phases of the war included general preparations for war, military control of the Japanese government, the formation of alliances with Germany and Italy, and aggressive warfare against the United States, the Soviet Union, the Philippines, Great Britain, and the Netherlands and Portugal. The broad language again allowed the prosecution to easily use any of Japan’s actions as evidence in their case against the defendants. Aggressive warfare charges and the “brutal” language of the indictment allowed for accusations against the defendants for perpetrating atrocities in their scheme to dominate East Asia. Since aggressive warfare was considered the most serious war crime, it is logical that the majority of the charges in the indictment are for crimes against peace.

Since the defendants were the key planners and leaders in maneuvering the Japanese to war, they were also judged responsible for Japan’s wartime atrocities.

Counts 37 to 52 in Group Two covered charges of murder. In the indictment, Group Two

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91 IMTFE, Indictment, 2-9.
93 Brackman, The Other Nuremberg, 84.
did not directly charge the defendants with committing murder, but of “initiating unlawful hostilities...unlawfully ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the said nations.”94 It described the victims as “both members of the armed forces of the said nations and civilians, as might happen to be in the places at the times of such attacks.”95 Group Two charges included “ordering, causing and permitting the armed forces of Japan” to carry out the attacks on 7 December 1941 at Pearl Harbor, Kota Bahru, Hong Kong and Davao, as well as on the H.M.S. Petrel.96 The remainder of the accounts in Group Two included charges for allowing the Rape of Nanking and similar attacks against civilians and POWs in other locations such as Canton, Hankow, Changsha, Hengyang, Kweilin, Liuchow, Mongolia, and the territories of the Soviet Union.97 Many of the charges in Group Two repeated the charges in Group One and would eventually be dismissed by the Tribunal. By the prosecution’s reasoning though, killings that occurred during an illegal war were murder. It was odd that charges for murder were included in an indictment for an international military tribunal when the main charge was aggressive warfare and none of the accused was personally responsible for murder. The IMTFE was the first time that murder had been prosecuted at the international level.98 Keenan recognized this peculiarity and in a press statement issued at the time the indictment was lodged stated “it is high time, and indeed was so before this war began, that the promoters of aggressive, ruthless war and treaty-breakers should be stripped of the glamour of national heroes and exposed as what

94 IMTFE, Indictment, 9.
95 IMTFE, Indictment, 9.
96 IMTFE, Indictment, 10-11. Japan’s attack on December 7, 1941 had multiple targets, although most of them have been forgotten with the exception of Pearl Harbor. The tribunal threw out all of these charges since the acts described in the counts fell under the aggressive warfare charges.
97 IMTFE, Indictment, 11-12.
they really are—plain, ordinary murderers."\(^9^9\) By stating the defendants were really only murderers, Keenan seemed to imply that murder—which fell under conventional war crimes or crimes against humanity—was a crime as serious as aggressive warfare. By likening the defendants to those who faced Class BC charges, Keenan also removed the heroic status associated with Japan's leaders during the war.

As with the counts in Group Two, the counts in Group Three did not necessarily charge the defendants with personally committing any war crimes. None of the defendants in fact were convicted of personally committing war crimes. Group Three covered conventional war crimes and crimes against humanity, charging the defendants with responsibility for "all acts performed by themselves or by any person in execution" of a common plan or conspiracy.\(^1^0^0\) As Japan's wartime leaders, the defendants were held responsible for the actions of their subordinates. Count 53 and 54 covered the atrocities committed against Allied POWs. Count 55 charged that the defendants "deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observances and prevent breaches thereof, and thereby violated the laws of war."\(^1^0^1\)

Events such as the Rape of Nanking and the Rape of Manila fell under this count. The remainder of the indictment, consisting of several appendices, summarizes the background information for the events listed in the counts, the ten phases of the war, the

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\(^9^9\) Brackman, *The Other Nuremberg*, 84-85.

\(^1^0^0\) IMTFE, *Indictment*, 13. The defendants essentially faced command responsibility charges. As leaders, they "should have known" about the actions of their subordinates and controlled those actions. This precedent was set at the trial of General Tomoyuki Yamashita, held in Manila from October to December 1945. For a detailed study of the Yamashita case, see Richard L. Lael's *The Yamashita Precedent: War Crimes and Command Responsibility* (Wilmington: Scholarly Resources Inc., 1982).

\(^1^0^1\) IMTFE, *Indictment*, 13. This charge covered military personnel as well as civilians in any of the territories occupied by Japan prior to and during the war. The crimes against humanity charge allowed for the prosecution of a state for its actions against its civilians, a measure taken in response to Germany's actions against Jews. The areas colonized by Japan at this time would have placed its civilians under Japan's rule, allowing the defendants to be charged with crimes against humanity.
treaties broken by Japan, and the statements of individual responsibility for crimes as described in the indictment.\textsuperscript{102} The indictment was thorough and well planned, and provided the public with an overview of Japan’s actions leading to and during the war. Since most of the public was unaware of the situation, the indictment served as one of the first lessons in the reeducation of the Japanese people in the Allied version of World War II history.

TABOO TOPICS

Perhaps the strongest indication that the Americans had interests other than the prosecution of Japanese war criminals was their handling of certain aspects of the Tokyo Trial. The United States avoided several issues during the trial, including questions with regard to the dropping of the atomic bombs on Hiroshima and Nagasaki in August 1945 and the Japanese experiments with bacteriological and biological warfare. None of the Allied nations represented on the Tribunal faced charges for its wartime actions.

Awaya Kentaro describes the Allies as pursuing their fact finding mission “half-heartedly.”\textsuperscript{103} Kentaro states the United States impeded the progress of the trial in several ways, including by its refusal to try Hirohito as a war criminal. The United States also avoided indicting any of the defendants on charges of bacteriological or biological warfare. Unit 731, the Japanese organization that focused on developing bacteriological and biological weapons during the war, carried out experiments on civilians to test their creations. The Americans were well aware of Unit 731 and its activities during the Tokyo Trial, but United States’ officials chose to withhold this information, in light of

\textsuperscript{102} IMTFE, \textit{Indictment}, Appendices A-E.
\textsuperscript{103} Totani, \textit{The Tokyo War Crimes Trial}, 248.
their own desire to gain the biological warfare technology before the Soviet Union. On 7 February 1947, MacArthur requested instructions from Washington on how to handle a request by the Soviet prosecutor to interrogate three Japanese connected with bacteriological warfare research. The Soviet prosecutor requested interviews with General Ishii, Colonel Kikughi, and Colonel Ota, who were connected with experiments at the Pingfan Laboratory in Manchuria. The Russians believed the United States would authorize supplementary bacteriological war crimes trials, for which they were preparing, but they also admitted an interest in obtaining knowledge about the mass production of typhus, cholera bacteria, and typhus bearing fleas, foci of the research in Pingfan. MacArthur’s personal opinion was that the Russians would not gain any information not already known to the United States, but that the United States might gain additional information from a monitored interrogation by the Soviets.\footnote{WDCSA from CINCFE, 7 February 1947. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 2 “Radiograms 25 June 1946-17 November 1948.”} The JCS replied on 21 March 1947 with several conditions that would have to be met for MacArthur to allow a Soviet interview. Competent United States personnel would first interview Colonels Kikuchi and Ota. If Kikuchi and Ota divulged any information that the Soviets should not be permitted to learn they would be instructed not to reveal that information to the Soviets. They would also be instructed not to mention the interview with the United States. Finally, MacArthur was instructed to make it clear that granting permission for the interview was an “amiable gesture toward a friendly Government” since the USSR had no defined interest in alleged war crimes committed by the Japanese against the
Chinese. Allowing the interview also could not be taken as a precedent and future requests might not be granted.\textsuperscript{105}

As the situation progressed, the United States obtained statements from Ishii through “persuasion, exploitation of Japanese fear of USSR, and desire to cooperate with US.” Ishii requested immunity from war crimes charges for himself, his superiors, and subordinates in exchange for detailed information regarding this research. The United States expected to gain more detailed information on these topics using the same tactics against lower ranked Japanese personnel. The Japanese interviewed would also be informed that the information would not be used as war crimes evidence. On 3 June 1947, the United States requested information concerning possible war crimes evidence or charges by any of the Allies against Ishii or members his unit. The United States was particularly concerned with field trials conducted against the Chinese soldiers or research focusing on the effects of bacteriological warfare on plant life.\textsuperscript{106} Only three days later, Alva C. Carpenter, the Chief of Legal Section, replied that “the reports and files of the Legal Section on Ishii and his co-workers are based on anonymous letters, hearsay affidavits, and rumors. The Legal Section interrogations, to date, of the numerous persons concerned with the BW project in China, do not reveal sufficient evidence to support war crimes charges.” Carpenter stated that there were no pending charges against Ishii, although his superiors were defendants in the Tokyo Trial. Since evidence was not

\textsuperscript{105} CINCFE (MacArthur) from Washington (JCS), 21 March 1947. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 2 “Radiograms 25 June 1946-17 November 1948.”

\textsuperscript{106} CINCFE (for Carpenter, Legal Section for Action) from WAR (WDSCA WO), 3 June 1947. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 2 “Radiograms 25 June 1946-17 November 1948.”
sufficient to connect any of the defendants with Ishii’s alleged bacteriological warfare activities, the IPS decided not to pursue the issue.\textsuperscript{107}

The United States did have evidence of Japan’s chemical warfare, but withheld it from the court. Awaya believes that this decision was related to the United States’ use of atomic bombs. He states:

They [the American authorities] avoided it because, should they pursue the case concerning the Japanese army’s poison gas warfare, it was highly probable that the defense would confute it by citing the American use of atomic bombs. In addition, the United States intended to conduct chemical warfare in later years, and was afraid of having its hands tied by setting a legal precedent against chemical warfare under international law at the Tokyo Trial. The United States abandoned the prosecution for this reason.\textsuperscript{108}

Awaya’s speculation about the United States’ intent to conduct chemical warfare in the future is noteworthy given the tensions between the United States and the Soviet Union, and subsequent American actions in the Vietnam War. Tensions between the United States and the USSR emerged immediately after World War II, and the American desire to prevent the Soviets from gaining information on Japanese wartime experiments makes Awaya’s hypothesis plausible. The United States recognized Japan as a potential ally against the Russians. Master Sergeant Samuel B. Moody, a Bataan Death March and POW camp survivor, was the only American GI to testify at the Tokyo Trial about the Bataan Death March. After his testimony, he worked with the war crimes investigation division. In his memoir, Moody recounts a conversation he had with a Major Radcliffe after investigating suspected perpetrators at a factory in Nagoya. Radcliffe informed Moody that “what we really want, what General MacArthur wants, is for the Japs to learn

\textsuperscript{107} War (WDSCA WC) from CINCFE (Carpenter, Legal Section, SCAP), 6 June 1947. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 159, Folder 2 “Radiograms 25 June 1946-17 November 1948.”

\textsuperscript{108} Totani, \textit{The Tokyo War Crimes Trial}, 248-249.
democracy. We may have to count on Japan as an ally some day... The Russians, that's our real enemy. They are building every minute. We're trying to forget the last war. They're busy getting ready for the next one.”

Radcliffe went on to explain to Moody that after the war the job of the United States was to rebuild Japan because “they won't bounce back unless we make a conscious effort to help them. And we have to, sergeant, we have to, if only to help ourselves.” Radcliffe's statements support Awaya’s hypothesis regarding the United States' plans for future warfare and help to explain the United States' actions concerning the information on Ishii's experiments.

Justice Röling of the Netherlands commented on the bacteriological warfare cover-up in 1981. Röling stated, “it is a bitter experience for me to be informed now that centrally ordered Japanese war criminality of the most disgusting kind was kept secret from the Court by the U.S. government.” The United States knew that Americans were among the victims of bacteriological warfare experiments, but felt that “the value to U.S. of Japanese BW data is of such importance to national security as to far outweigh the value accruing from war crimes prosecution.” This decision went directly against the goal of the IMTFE since it granted immunity to men who committed what Justice Röling called “the gravest war crimes.” The United States worried about the “remote possibility” that the Soviet Union might disclose evidence not only of the bacteriological experiments, but also of the American victims. The cover-up of these experiments and granting immunity to General Ishii and his men confirm the United States’ primary

113 Gomer, “Japan’s Biological Weapons,” 52.
interest in preparation for an expected war with the Soviet Union, rather than the goal of the IMTFE. Attention to emerging Cold War tensions triumphed over punishment for wartime atrocities.

VERDICTS AND SENTENCES

The trial proceeded much more slowly than anticipated, and the court did not adjourn until 16 April 1948, with verdicts and sentences delivered in November 1948. The judgment ran more than 1200 pages and it took President Webb eight days to read it aloud to the court.\(^{114}\) Much of the judgment summarized Japan’s history and involvement in aggressive warfare against the Allied nations. The verdicts and sentences comprised only a small part of the document. The judges threw out the bulk of the charges against the defendants on the grounds of redundancy or lack of evidence. On the counts that remained, the defendants were charged as “leaders, organizers, instigators, or accomplices in the formulation of execution of a common plan or conspiracy to wage wars of aggression and wars in violation of international law,” as well as waging unprovoked aggressive warfare against China and the various other Allied nations.\(^{115}\) The eight counts for which the defendants were convicted fell into the Class A category concerning aggressive warfare, the main charge facing the accused as they were all chosen for trial based on their role in planning the war. All of the charges in Group Two, “Murder,” were dropped. From Group Three in the indictment, crimes stood related to authorizing and/or permitting inhumane treatment of prisoners of war and the defendants


disregarding their responsibility to prevent wartime atrocities.\textsuperscript{116} Although the defendants were not believed to have personally committed any wartime atrocities, several of them were found guilty of possessing knowledge of atrocities and failing to stop them, as was the case for General Matsui who was in charge during the Rape of Nanking, indicating that Class B and Class C war crimes were important. The conviction of Class A defendants for Class BC crimes also upheld the precedent set during the Yamashita trial in Manila and confirmed that wartime leaders were responsible for the actions of their subordinates.

All of the twenty-five war criminals were found guilty of at least one charge. Seven defendants received the death sentence; sixteen faced life imprisonment. Only Togo and Shigemitsu received lesser sentences, 20 years and seven years in prison, respectively. The sentences lacked any discernible pattern (see Table 2 below.) Only two defendants were acquitted on Count 1, the charge for planning aggressive warfare. The seven sentenced to death were convicted of one of the conventional war crimes charges--either Count 54 or 55. Matsui, convicted only on Count 55 received the death penalty. Matsui's death sentence indicated that the Allies viewed conventional war crimes charges as one of the most serious charges in the indictment. He received the death sentence for a Class BC crime and was not charged with crimes against peace. In an example of the inconsistency of the sentences, other defendants who were convicted on Count 55 in addition to Class A crimes received lighter sentences. Even the other defendants convicted on the same counts did not receive the same sentence. Togo and Umezu, for example, were convicted of the same charges yet Togo received twenty years in prison while Umezu received a life sentence.

\textsuperscript{116} Ginn, \textit{Sugamo Prison, Tokyo}, 40, 136-137.
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Table 2: Verdicts and Sentences of Class A War Criminals  
G=Guilty, NG=Not Guilty, NI=Not Indicted, X=No findings by IMTFE
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Table 2 Continued

Class A war crimes were the focus of the Tokyo Trial and so crimes against peace should have received the harshest sentences. The IMTFE Judgment supports the gravity of Count 1. It states “we have come to the conclusion that the charges of conspiracy to wage aggressive wars have been proven and that these charges are criminal in the highest degree.” Six of the seven defendants who received death sentences were convicted of aggressive warfare and one of the Class BC charges, either Count 54 or 55. The seventh defendant to receive the death sentence, Matsui, was convicted only of Count 55, a crimes against humanity charge. If crimes against peace were considered the most grievous war crimes, it is curious that Matsui was sentenced to death for failing to control his troops in Nanking. Matusi’s sentence seems to suggest that crimes against humanity

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117 IMTFE Judgment, 986.
were just as important as crimes against peace, though the entire purpose of the tribunal stated otherwise. It is also possible that Matusi’s death sentence was part of the re-education of the public about Japan’s wartime actions. Since the events in Nanking were well known, Matusi’s sentence served as a warning against future atrocities. The other seventeen defendants who were convicted of crimes against peace received lesser sentences.

Six of the seven defendants sentenced to death were military officials. Hirota, a former premier and foreign minister, the only civilian who received the death sentence, “took the fall for Japan’s civilian leaders.”\textsuperscript{118} Hirota’s conviction caused an outcry from various factions. Keenan’s assistant, Robert Donihi, defense attorney George Fumess, defendant Shigemitsu, and American defense attorney George Yamaoka all believed Hirota should have been acquitted or received a lesser sentence, considering his role as a civilian and his inability to control the military that essentially ran the government.\textsuperscript{119} Togo, another civilian and the former foreign minister, was convicted on the same counts as General Umezu and General Suzuki, but he received a lesser sentence than the Generals. Why the sentences varied is unclear. Piccigallo suggests that the tribunal considered various peripheral factors in determining each defendant’s guilt.\textsuperscript{120} These likely included the defendant’s official position, his actions during the war, and his influence over military actions.

After Webb delivered the verdicts and sentences, MacArthur had to review and approve them. On 24 November 1948 he approved the judgment after meeting with the Allied Council for Japan for recommendations. The United States, Soviet Union, Great

\textsuperscript{118} Brackman, \textit{The Other Nuremberg}, 381.
\textsuperscript{119} Brackman, \textit{The Other Nuremberg}, 384.
\textsuperscript{120} Piccigallo, \textit{The Japanese on Trial}, 28.
Britain, China, New Zealand, and the Philippines recommended no changes. The French representative considered the death penalty unethical and argued that the Allies, based on their own actions, were not in position to take the moral high ground. The representative from India, on the basis of Webb's separate opinion, argued for commutation of the death sentences to life imprisonment. The Netherlands also recommended the commutation of several sentences, and the representatives from Canada and Australia supported a prison sentence for Hirota. Although there was disagreement between the officials, MacArthur confirmed the sentences. The seven defendants, including Doihara and Hirota who were sentenced to death, appealed to the United States Supreme Court. The defendants argued that the IMTFE was essentially a tribunal of the United States and not an international tribunal. They claimed that MacArthur had overstepped his authority in creating the Tribunal, and therefore it was not international in nature. The issue centered on MacArthur's creation of the Tribunal, while in Nuremberg four powers created the Tribunal. The Supreme Court however, less than three weeks after agreeing to hear the argument rejected the idea and stated that the Tribunal was in fact international in nature since MacArthur represented the Allied powers, and therefore an American court had no authority to alter the judgment or sentences. With the sentences upheld, executions of the seven men condemned to death were carried out on 23 December 1948. The rest of the defendants remained in prison.

Justice Röling, in an interview in 1977, expressed his opinion on the execution of the sentences. Röling suggested that MacArthur perhaps listened to American public opinion and attempted to please the American people by following through with the

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122 Brackman, *The Other Nuremberg*, 398-399.
sentences. Röling’s personal speculation was that MacArthur was ordered to uphold the majority judgment. For propaganda purposes, and to aid in the prevention of future aggressive wars, Washington might have ordered MacArthur to uphold the sentences. The American public may also have expected guilty verdicts and sentences for the leaders who had planned the attack on Pearl Harbor. Röling’s opinion seems to be based on a statement made by MacArthur later to Shigemitsu. Röling quotes MacArthur telling Shigemitsu: “I was always convinced that you were innocent and that your condemnation was a mistake.”

Röling stated that the arguments MacArthur needed to commute Shigemitsu’s sentence were in his dissenting opinion, though he did not believe MacArthur read his or any of the dissenting opinions, especially as he had approved the sentences very shortly after they were pronounced. People expected the “Supreme Commander who had established the Tribunal should accept its findings and judgment.” MacArthur’s adherence to the sentences is noteworthy, especially since the situation regarding Japan had changed by late 1948. Reduction of the sentences could have been a gesture of goodwill toward the Japanese. Perhaps the United States thought it inappropriate to show leniency toward any of Japan’s major war criminals, and saved those acts for the Class BC trials.

The inconsistency of the verdicts and sentences for the Tokyo defendants raises questions about the decisions. The Judgment did not offer any clues as to how the sentences were determined, although Webb did point out that no one at Nuremberg received the death penalty if they were convicted only of crimes against peace, and the

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124 Röling and Cassese, *The Tokyo Trial and Beyond*, 82.
125 Röling and Cassese, *The Tokyo Trial and Beyond*, 82.
same principle should be applied to the Japanese. Since the tribunal was convened specifically to try defendants for aggressive warfare, it would seem that Class A crimes would receive the harshest penalties. By only sentencing defendants who were convicted of conventional war crimes in addition to crimes against peace (except in the case of Matsui) the IMTFE did not seem to uphold the great importance of the Class A crime. Since most defendants convicted on Class A charges received prison sentences, the sentences overall indicate that conventional war crimes were in fact of great importance because only defendants convicted on those charges were sentenced to death. Planning for aggressive warfare alone was not enough to warrant the death penalty.

DISSENTING OPINIONS

Although the majority of the justices supported the judgment, several dissenting opinions were filed. These opinions were not presented to the court, but were included in the final record of the trial. Justice Pal, from India, dissented completely from the majority opinion. Justices Bernard (France) and Röling (the Netherlands) partially dissented. Justices Jaranilla (Philippines) and Webb concurred, but submitted separate opinions reflecting their views on specific problems. The variety of opinions reflected the justices' personal beliefs, or disagreements with sentencing and procedural matters. The dissents and separate opinions reflected the difficulty in reaching agreements in international tribunals and point to the controversies associated with the Tokyo Trial.

126 Horwitz, "The Tokyo Trial," 573.
127 Pal's dissent was published in its entirety after the trial concluded. Totani also offers a thorough chapter on Pal's dissent and its repercussions, especially amongst the Japanese, in The Tokyo War Crimes Trial. 128 Horwitz, "The Tokyo Trial," 542.
One of the biggest criticisms of the trial revolved around the idea of conspiracy. As Richard Minear points out, crimes against peace and crimes against humanity were “of highly uncertain status in international law.”\textsuperscript{129} In order to try suspects for crimes against peace, the prosecution had to argue that certain international conventions such as the Kellogg-Briand Pact established the accountability of leaders for actions of their country in international law. Thus charges of conspiracy were included in the indictment. Defense lawyer Kenzo Takayanagi argued that conspiracy was a “peculiar product of English legal history.”\textsuperscript{130} Although Minear criticized the Tokyo Trial, based on his vantage point from the Vietnam era, his emphasis on the legal debate reflects on the more important criticisms of the trial. The concept of conspiracy remains a contention that surrounds the Tokyo Trial. In this instance, Webb and Pal agreed with the critics and felt that the Tribunal did not have the authority to charge for conspiracy as it did not already exist under international law. The fact that two of the justices of the trial questioned the validity of their authority suggests that the Allies were not strict in their interpretation of law. A loose interpretation of international law and the idea of conspiracy allowed the tribunal to successfully carry out its responsibility to punish those responsible for waging aggressive warfare, even if there was no real precedent. A strict interpretation may have prevented the tribunal from trying the defendants, as the Class A trial required charges of crimes against peace. Minear also argues that the conspiracy charge allowed the prosecution to include a spectrum of defendants.\textsuperscript{131} The conspiracy charge enabled the Allies to arrest a large number of suspects, many of whom were held for the duration of the IMTFE but released without trial.

\textsuperscript{129} Minear, \textit{Victors’ Justice}, 35.
\textsuperscript{130} Minear, \textit{Victors’ Justice}, 12, 40-41.
\textsuperscript{131} Minear, \textit{VICTOR’S JUSTICE}, 37.
Minear states the conspiracy charge allowed for relaxed rules of evidence. The relaxed rules of evidence clause proved important in both Class A and Class BC trials, as the Japanese destroyed many official documents prior to the start of the war crimes investigations. Although the court acted as a model of western style justice systems and required sufficient evidence to convict a defendant, the relaxed rules of evidence made the prosecution’s task easier and contributed to the ease with which the tribunal could reach guilty verdicts.

Both Webb and Pal agreed that conspiracy was not a crime under international law. Webb stated:

It may well be that a naked conspiracy to have recourse to war or to commit a conventional war crime or crime against humanity should be a crime, but this Tribunal is not to determine what ought to be law but what is the law. Where a crime is created by the International Law, this Tribunal may apply a rule of universal application to determine the range of criminal responsibility; but it has no authority to create a crime of naked conspiracy based on Anglo-American concepts; nor on what it perceives to be a common feature of the crime of conspiracy under the various national laws.

Pal also concluded that “conspiracy by itself was not yet a crime in international life.”

One of the criticisms of the Tokyo Trial was that it was based on ex post facto law, and the defendants were charged with crimes that had not existed at the time they were committed. Webb’s statement points out the difficulty in translating national legal concepts over into international law without clear precedents. Many of the issues included in the dissenting opinions, such as the questions over the conspiracy charge, mirrored objections made by the defense prior to and during the trial.

Webb detailed his disagreement with the Tribunals’ definition of conspiracy, arguing that the concept of conspiracy adopted had no grounds in international law.

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132 Minear, Victor’s Justice, 28.
133 Horwitz, “The Tokyo Trial,” 554.
134 Horwitz, “The Tokyo Trial,” 554.
although he recognized that it existed in Anglo-American law. He also disagreed with the punishments, citing the Nuremberg sentences as a precedent. In Nuremberg several war criminals convicted of plotting and waging aggressive warfare received life sentences. Webb urged the IMTFE to do the same. He consistently opposed the death penalty; the Tokyo Trial was the first time Webb had ever pronounced a death sentence in his twenty-three years on the bench. Webb’s opinion was most sensational in his conjecture that Hirohito should have been charged as a war criminal.\textsuperscript{135}

Pal’s agreement with Webb on the lack of precedent for conspiracy charges in an international court went further in his disagreement with all of the findings in the majority opinion and culminated in his dissent that called for the acquittal of each defendant on all charges. Rather than active conspiracy, Pal believed that Japan had been driven to its actions by threatening conditions elsewhere in the world, such as the rise of Communism in China and the Western nations’ economic embargoes against Japan. In his opinion, Japan had been justified in initiating the war to protect itself.\textsuperscript{136} For the idea of crimes against peace to have been legitimate, Pal argued, all nations involved would have to be agree unanimously, and even the victor nations would need to be held responsible for their actions during the war.\textsuperscript{137} Maga mentions that Pal asked, in the name of fairness, that the Allied leaders also be tried or the Tokyo defendants found not guilty of planning aggressive warfare. This request was refused and Pal continued to claim the trial was “victor’s justice.”\textsuperscript{138}

\textsuperscript{136} Totani, \textit{The Tokyo War Crimes Trial}, 218-219.
\textsuperscript{137} Piccigallo, \textit{The Japanese on Trial}, 31.
\textsuperscript{138} Maga, \textit{Judgement at Tokyo}, 67.
Pal also argued that Japan was not legally bound by the Fourth Hague Convention of 1907, the Prisoner of War Convention of 1929, or any other international agreements because not all signatories ratified the Fourth Hague Convention, and Japan agreed to comply with the Prisoner of War Convention only out of good will and was not legally bound to follow through. While Pal admitted that the Japanese had committed atrocities against civilians and prisoners of war, he did not think the Tokyo Trial dealt with the actual perpetrators of the crimes. Rather, the people actually responsible for war crimes were those at the lower levels, such as soldiers in the field or camp guards. Pal actually praised the work of the tribunals that oversaw the Class BC trials conducted by the various Allied nations and believed that they were right in holding war crimes trials because they focused on those who carried out the crimes. He argued that the Tokyo Tribunal should not have charged the defendants with conventional war crimes as the accused did not personally commit any atrocities. Pal's position supports the importance of the Class BC trials and their success in trying perpetrators who personally committed war crimes. It undermines the importance of Class A crimes against peace, which was the entire basis for the trial. If the defendants were not charged with Class A crimes, the Tokyo Tribunal had no jurisdiction. According to Pal's logic, the Tokyo tribunal should not have existed. The prosecution was able also to charge the defendants with Class BC crimes due to the indictment's wording and the range of time and scope of events it covered. The indictment focused most heavily on aggressive warfare. Since Pal believed the defendants were justified in their actions, were innocent of waging aggressive warfare, and were not personally responsible for committing Class B or Class

C crimes, he could argue that each defendant should have been acquitted. In the end, Pal was the only justice who did not sign the Tribunals' Judgment, indicating the depth of his conviction and severe opposition to the majority opinion. Justices Bernard and Röling signed only with the understanding that their separate opinions formed part of the record.\textsuperscript{141}

Justice Jaranilla, in his separate opinion, also disagreed with the sentences, but, unlike Pal, he felt that the Tribunal was not strict enough in its punishments. Jaranilla stated that "if any criticism should be made at all against this Tribunal, it is only that the Tribunal has acted with so much leniency in favor of the accused and has afforded them, through their counsel, all the opportunity to present any and all pertinent defenses they had, thus protracting the trial."\textsuperscript{142} Jaranilla raised no questions about precedents or international law, but focused on what he believed to be the lenient sentences. As a Bataan Death March survivor, perhaps he felt that the sentences should be harsher. The defense questioned Jaranilla’s objectivity and feared his bias and asked that he be removed from the bench since he had "facts, of his own personal knowledge, which may creep into the case."\textsuperscript{143} After pointing out that the Tribunal did not have the authority to overturn MacArthur’s appointments, Webb declared that the motion to remove Jaranilla from the bench did not present clear grounds for a challenge, and it was denied.

The only other justice to call for stricter sentences for three of the defendants was Justice Röling. Röling thought that the Class A charges were comparable to political crimes in domestic law, and therefore in accordance with international law. Röling did not oppose the death penalty for those accused of conventional war crimes, but he

\textsuperscript{141} Brackman, \textit{The Other Nuremberg}, 393.
\textsuperscript{142} Piccigallo, \textit{The Japanese on Trial}, 29.
\textsuperscript{143} Brackman, \textit{The Other Nuremberg}, 116.
disagreed with giving the death sentence to anyone convicted only of crimes against peace. Like Webb, he cited Nuremberg in his argument. Röling's opinion that only conventional war crimes merited the death penalty implies that the Class BC suspects had committed more severe crimes, since they deserved harsher punishment than those convicted of crimes against peace. Based on this view, Röling believed that Oka, Sato, and Shimada should have been found guilty of committing conventional war crimes and thus sentenced to death, although none of the three was found guilty of Counts 54 or 55, and each received life imprisonment. He agreed with six of the seven death sentences, and believed that Hirota, as a diplomat and a civilian, deserved an acquittal. In addition, Röling thought that four other defendants, Togo, Shigemitsu, Kido, and Hata, should also have been acquitted.144

Justice Bernard's partial dissent focused on procedural issues. The French justice opposed the failure to conduct a pretrial inquiry. He concurred with the opinion that the prosecution had access to more resources than the defense, and therefore was at an advantage. Like Webb, Bernard also believed that Hirohito should have been tried as a war criminal.145 He thought the absence of the Emperor was "certainly detrimental to the defense of the Accused."146 Though he did not argue for any changes in the sentences, Bernard argued that inclusion of the Emperor in the trial might have helped the defendants, suggesting that perhaps he thought the outcome of the trial might have been different had the Emperor been indicted, or at least called as a witness for the defense.

Finally, Bernard pointed out that the judges failed to deliberate aloud and jointly before reaching their individual decisions. He concluded that "a verdict reached by a

144 Piccigallo, The Japanese on Trial, 30.
145 Maga, Judgment at Tokyo, 63.
146 Piccigallo, The Japanese on Trial, 29.
Tribunal after a defective procedure cannot be a valid one.” Again Bernard seems to suggest that the outcome of the trial might have been different had in his opinion fair and proper procedure been followed.

The differences of opinion among the judges illustrate the underlying tensions surrounding the Tokyo Trial. Although justices should be free from bias, the dissenting opinions indicated that the eleven justices could not agree on some of the most important underlying principles or core issues, such as the idea of criminal conspiracy to commit aggressive war. The justices themselves raised questions about their authority. The Tokyo Trial only had jurisdiction if defendants were charged with crimes against peace in addition to conventional war crimes. The purpose of the IMTFE was to try leaders, not perpetrators. Though dissenting opinions are part of western style justice systems, the fact that the United States and seven other nations did not submit any further opinion or dissent while four of their Allies did raised questions about those nations’ lack of concern with respect to trial procedure or international law. The four dissenting justices represented countries unconcerned with running a smooth Occupation, gaining information from experiments conducted by the Japanese, or in the case of the United States, in playing its new role in the postwar world. Instead, they focused on the aspects of the trial.

CONCLUSION

The Tokyo Trial demonstrated that the Americans were not working solely to punish Japanese war criminals but sought to ensure a successful Occupation that would result in a new, democratic Japan willing to ally with the United States against the USSR.

147 Piccigallo, The Japanese on Trial, 29.
The Class BC trials taking place in other areas throughout the Pacific punished war criminals. They also proved politically useful to the United States as mechanism with which the Japanese could learn democratic principles. Although the Class A trial received more attention, the Class BC trials proved to be just as important, if not more important than the Tokyo Trial.
CHAPTER III

CLASS BC WAR CRIMES TRIALS: YOKOHAMA

The Allies faced an enormous task in conducting the Pacific war crimes trials. Four percent of Allied POW’s held by German forces died in captivity. The deaths of Allied POW’s held by Japanese forces was almost seven times higher, at twenty-seven percent. The high percentage of POW deaths, in addition to crimes against civilians in Japanese occupied territory, resulted in over 2,200 Pacific trials with 5,700 defendants. Those numbers include only the defendants who were apprehended and tried, and not those suspects who escaped capture, committed suicide, or were released before they could be brought to trial.

Most Class BC war crimes trials occurred between 1945 and 1951, and unlike the Tokyo Trial, the Class BC trials were conducted separately by the individual Allied nations. Each Allied nation created its own tribunal and ran it according to its own laws. In one of the few studies that focuses on the BC trials, Philip Piccigallo explains:

Each nation, viewing the trials within its own domestic and international political, economic, and social context, outlined and followed, within practical limitations, its own war crimes policy. Put simply, Japanese war crimes trials did not to any great extent determine the course of any Allied nation’s major policies; rather, major policies and relative factors determined the course of the trials in each nation. This is another way of saying that Japanese war crimes trials were made to fit into the overall national and foreign policy objective of each Allied country.

The Tokyo Trial may have been in the limelight due to its high profile defendants, but the bulk of the work in punishing war criminals was accomplished by the Class BC trials. The more numerous BC trials charged war criminals with committing

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1 Piccagallo, The Japanese on Trial, 209.
2 Piccagallo, The Japanese on Trial, xiii.
atrocities, or for allowing and ordering crimes to be committed. The defendants represented a wide spectrum of Japanese society. They included soldiers, farmers, teachers, interpreters, priests, nurses, doctors, government officials, and college professors. The Tokyo defendants allowed, encouraged, or ordered war crimes, while the BC defendants were present where atrocities were committed and were often accused of having direct participation, ordering crimes to be committed, or having knowledge of crimes but failing to put a stop to them.

The United States tried criminals in three Pacific theater locations: Yokohama, Shanghai, and Guam. Trials initiated in Manila were soon turned over to the Philippine government. This chapter focuses on the United States’ trials in Yokohama, the site of the majority of the Class BC trials overseen by the United States.

Unlike the Tokyo Trial, the Class BC trials did not establish many precedents and attracted little attention outside of Japan. Yet the BC trials were more successful in punishing war criminals than the Class A trial, and they played a more important role in establishing the global politics as the American Occupation of Japan came to an end and the United States sought to secure a stable ally against Communism in Asia.

DELEGATION OF POWER FOR CLASS BC TRIBUNALS: YOKOHAMA

The bulk of the American Pacific war crimes trials were held from 1945 to 1949. Of the 474 Class BC cases tried by Americans, 319 of those trials were conducted at

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3 Piccagallo, The Japanese on Trial, xiv.
4 Piccagallo, The Japanese on Trial, 83-84.
Yokohama. The war crimes proceedings at Yokohama included 372 cases, though only 319 came to trial.

The Yokohama commissions were more international than the tribunals conducted by the other Allied nations due to the fact that they were connected to SCAP. Other trials did not receive their authority from MacArthur. The Yokohama commissions were appointed through the regular army channels by SCAP, who represented all the occupying nations.6 These commissions, appointed on a case by case basis, could include representatives of several nations, appointed to try cases involving crimes against one or multiple nations,7 supporting Piccagallo’s claim that the Yokohama trials were more international in nature. The Commanding General, Eight Army also viewed the proceedings from an international aspect because he, and the reviewing authority, were created by SCAP and not United States functionaries.8 Granting army authorities the ability to appoint judges further demonstrated the commitment of the United States to cooperate with its Allies.

On 5 December 1945, MacArthur granted Lt. General Robert L. Eichelberger, the commanding general of the US Eighth Army at Yokohama, the authority to create military commissions for the BC war crimes trials. A lengthy memo to Eichelberger detailed the rules and regulations concerning the Class BC war crimes trials. The directive from MacArthur allowed Eichelberger to appoint judges from any Allied nation to the military commission.

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6 Piccagallo, *The Japanese on Trial*, 83.
7 Commanding General, Eighth Army, APO 343 from General MacArthur, 5 December 1945. *War Crimes Information: Copies of Orders, Directives, and Other Memoranda Pertaining to Establishment, Administration, and Prosecution of War Criminals in Japan and the Philippines*, United States?: s.n., 1946.
The memo granted the military commission's jurisdiction over Class A, B, and C war crimes. While the commissions did have the authority to try war criminals as Class A offenders, none of the trials at Yokohama charged defendants with crimes against peace. Each commission had at least three members, and unlike the Tokyo Trial, in each case alternates were appointed. Members could be service personnel in the Army or Navy, or qualified civilians. A "specially qualified" member of the commission would be designated as the law member, similar to the President at the Tokyo Tribunal. The law member had the final say in rulings on the admissibility of evidence.

The document also stated appointees should not be biased by personal interest or prejudice, and no appointments would be made of individuals who personally investigated a case or were needed as a witness. This was an early contention made by the defense in the Tokyo Trial, when it was discovered that Justice Jaranilla from the Philippines was a survivor of the Bataan Death March. The IMTFE ruled that his experience did not bias him, and he was allowed to sit on the bench. By including the statement against personal bias or prejudice in tribunal appointments, the Class BC trials avoided much of the controversy and criticism surrounding the Class A trial. The BC commissions followed a more stringent set of regulations than the IMTFE. The first trial at Yokohama, against Tatsuo Tsuchiya, or "Little Glass Eye" in December 1945 allowed the military commission to put into practice its commitment to avoid bias. In the case of Tsuchiya, Colonel Joseph H. Ball was relieved of duty as a member of the military commission when the defense for Tsuchiya objected after learning that Ball was captured.

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9 Commanding General, Eighth Army, from General MacArthur, 5 December 1945. War Crimes Information.
10 Commanding General, Eighth Army, from General MacArthur, 5 December 1945. War Crimes Information.
in the Philippines, survived the Bataan Death March, and spent three years in a Japanese POW camp. Ball stated that he “believed himself to be unprejudiced except in so far as incidents that he himself witnessed.” However, terse responses to further questioning case a doubt on his ability to be impartial and Ball was removed from the bench. This attempt to eliminate possible prejudice provided Tsuchiya a commission that held no bias based on wartime experiences.

The memo detailed the trial procedure, providing nine steps, from reading the charges and specifications aloud in open court to the commission considering the case in closed session before announcing the judgment and sentence. An additional document regarding trial proceedings supplemented the 5 December 1945 memo and essentially provided a script for the trials. Since commission members changed on a case by case basis, these guidelines ensured that each defendant faced common standards in trials before a commission at Yokohama. The guidelines began with the procedure for the commission members’ entrance into the courtroom, continued with the swearing in of court officials, reading of charges, opening statements, questioning of witnesses, and ended with the closing of the commission for discussion and reading of the verdict. The guidelines also limited the possibility of controversy regarding court policies and proceedings since each defendant was subject to the same procedure. They ensured that each trial demonstrated the democratic practices that the United States was determined to convey to the Japanese for their country’s rebuilding. The final section in the 5

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December 1945 memo granted the commissions permission to determine the most beneficial rules to complete their task, as long as they were not inconsistent with the rules set by SCAP. This paragraph allows some leeway to determine trial procedure, as long as decisions did not deviate substantially from SCAP orders.

Just as the IMTFE sentences were subject to MacArthur’s review before their execution, the Class BC trial sentences were also subject to review. The memo provides more detail than the IMTFE Charter regarding sentences. The commission was granted authority to sentence defendants to death, prison sentences, fines, or any other punishments the committee deemed appropriate. All sentences were reviewed by the officer appointed to the commission, who had the ability, like MacArthur in the Class A trial, to approve, suspend, or reduce the sentences but not to increase their severity. Allowing the commanding officer of the US Eighth Army to review sentences of the Class BC trials lightened MacArthur’s workload. MacArthur only had to step in directly where the accused was sentenced to death.

TRIBUNAL RULINGS, EVIDENCE, AND TRIAL PROCEDURES

Rulings were determined by a majority vote. No less than two thirds of the commission members had to be present for the vote. The commission was urged to “confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.” Most trials at Yokohama lasted several days or weeks. One trial lasted

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15 Commanding General, Eighth Army, from General MacArthur. 5 December 1945, War Crimes Information.

16 Commanding General, Eighth Army, from General MacArthur. 5 December 1945, War Crimes Information.
only one day. In order to expedite the trials, the Class BC memo, like the IMTFE Charter, relaxed the rules of evidence stating that "the commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure."\(^{17}\) A major problem arose when the United States demanded official military documents. The Japanese had destroyed as many official records as possible to hide evidence of war crimes making the relaxed rules of evidence necessary. Purposeful destruction of official documents also indicated the Japanese were aware and fearful of the criminality of their actions and cognizant of the confirmation of their actions that the records would provide to the occupying authorities.

Evidence was to be admitted if, in the opinion of the commission, it "would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man."\(^{18}\) The memo contained criteria similar to what the IMTFE Charter would later adopt. Evidence included documents issued by the government or International Red Cross, affidavits, depositions, diaries, letters, copies of documents, as well as sworn or unsworn statements that appeared to contain relevant information.\(^{19}\) During the first trial at Yokohama, that of Tatsuo Tsuchiya, the defense argued against allowing affidavits into evidence. Members of the commission overruled the objection, stating "the protection of the United States Constitution and Articles of War was not available to the accused as a Japanese citizen and a former belligerent."\(^{20}\) The defense argued that affidavits did not allow the suspect

\(^{17}\) Commanding General, Eighth Army, from General MacArthur, 5 December 1945. *War Crimes Information.*

\(^{18}\) Commanding General, Eighth Army, from General MacArthur, 5 December 1945. *War Crimes Information.*

\(^{19}\) Commanding General, Eighth Army, from General MacArthur, 5 December 1945. *War Crimes Information.*

to face his accuser in court, a right guaranteed to defendants in a US court of law. Likely, cost, time, and the number of potential witnesses led the commission to deny the defendant the right to face his accuser. Many Allied prisoners had returned home by the time the trials began and the cost to transport witnesses to Yokohama would have been very high.

The memo also allowed for the introduction of evidence from a previous trial if the accused was charged in a crime involving a military unit or other organization. This was especially important in the Class BC trials because of the high number of suspects charged with Class BC crimes and the possibility of trying suspects in multiple cases. The judgment of previous trials when the defendants were part of the same group would also be given full faith and credit in subsequent trials. This decision suggested the United States' haste to get through the war crimes trials process. The desire to move on to other, seemingly more pressing issues, such as the signing of a peace treaty with Japan, may have influenced the agenda. Educating the Japanese people on the actions of their government and military may also have been a factor in the rapid preparation for the trials, since most civilians were unaware of wartime atrocities. By showing the Japanese the conduct of their country during war, the United States may have hoped that they would be more willing to follow democratic ways, or at least comply with US demands.

The defense was aware of the relaxed rules of evidence, but in some cases the American defense lawyers still objected to the use of affidavits. In case number 51, Yasushi Kimura, who served as a civilian guard in a POW camp, was charged on ten counts of abusing American POWs. No POWs testified at his trial, but some submitted

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21 Commanding General, Eighth Army, from General MacArthur, 5 December 1945. War Crimes Information.
testimony through affidavits. Kimura’s defense lawyer submitted a general objection to all affidavits on the grounds that the defendant did not have the occasion to cross examine the person who submitted the affidavit. The commission overruled the objection and the defense then made specific objections to statements in the affidavits, some of which were sustained. In several instances, the prosecution and defense lawyers worked together to reach agreement on which statements should be stricken. The affidavit of William Rudolph Leibold presented several such opportunities. The defense and prosecution agreed that paragraphs one and two of the affidavit should be omitted since they did not mention the defendant specifically and only gave a general overview of Leibold’s personal experience during the war. The prosecution agreed to remove several other paragraphs described as irrelevant, decisions sustained by the commission. In Kimura’s case, members of the commission took into consideration what was best for the defendant. The defense proved that one witness called by the prosecution personally did not like the suspect. While a commission member attempted to find out whether there was any “malicious or spiteful feeling” on the part of the witness against the accused, the defense successfully objected on the grounds that the witness’s reasons for not liking the defendant had no bearing on the war crimes case. Although the witnesses’ personal feelings about the defendant were not relevant to the case, allowing the expression of those feelings in court may have influenced the commission members.

The evidence section also stated, “all purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or

22 United States vs. Yasushi Kimura, Case Docket No. 51, Record Group 331, Box 9499, War Crimes Division Record of Trial File, National Archives and Record Administration, College Park, Maryland.
statements." This statement raises questions about the manner in which confessions were obtained, although the directive included no information regarding this practice.

**LEGAL SECTION AND WAR CRIMES INVESTIGATION**

Although there was a considerable delay before the Class A trial in Tokyo, the Class BC trials in Yokohama began quickly once the institutional framework was in place. MacArthur oversaw the war crimes trials and the Legal Section. In order to investigate and prosecute war criminals, a special staff section of General Headquarters SCAP was created. Several predecessors to Legal Section existed. The War Crimes Office of the US War Department was established on 7 October 1944, and the Judge Advocate’s Office opened a War Crimes Branch in the Pacific in April 1945. Two months later, a War Crimes Investigation Detachment opened in Manila. These offices investigated reports of war crimes and assisted with evidence collection. In October 1945, these offices were turned into the Legal Section and took over the prosecution of war criminals. Colonel Alva C. Carpenter was appointed Section Chief. It was his responsibility to advise MacArthur on “general policies and procedures with respect to war crimes in categories other than the international aspect,” or Class BC crimes, as well as general policies regarding occupation courts and general legal matters. The Legal Section had many responsibilities regarding war crimes, including the investigation of

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crimes, preparing cases of alleged war criminals, and maintaining a central registry of all Japanese war criminals and suspects.27

In order to carry out its responsibilities, the Legal Section was authorized to create functional divisions. These included Prosecution, Investigation, Law, Criminal Registry and Administration, Control, Public Relations, and Liaison.28 Since the Class BC trials were daunting the divisions narrowed the focus of those employed in each department. Prosecution, composed of mostly attorneys, was assigned specific cases to prepare. Investigation prepared information required for successful prosecution. The Criminal Registry maintained the records of war crimes in the Pacific. The Liaison Office served as the link between the Japanese government and Legal Section. Liaison transmitted demands for documents and other information to the Japanese government on topics such as POW camps and processed their replies. The Legal Section required constant access to Japanese military records, controlled by various Japanese Ministries. Liaison routinely interacted with the Ministries. However, due to the nature of the Occupation, Liaison, as well as Legal Section, did not always trust nor get along with the Ministries. Demobilization Ministries, run by the Japanese, controlled the Japanese government, and SCAP guided the direction of the demobilization. However, since the Japanese were still essentially running the government, people who had perhaps committed atrocities continued to work in the Ministries and some were suspected of hampering the investigations.29 Even taking into account the loss of military records and the occasional

27 SCAP, General Orders, 9 December 1945. War Crimes Information.
deception, Legal Section still succeeded in finding evidence of multiple atrocities and in trying hundreds of suspected war criminals on Class BC charges.

The Japanese had been warned several times prior to the end of the war that war criminals would be punished. As soon as the Japanese surrendered, preparation for the trials began. The day Japan surrendered, the government was ordered to provide complete information on the location of POW camps and the names of all Allied POWs and civilian prisoners in the camps. To deal with the enormous task of investigating war crimes and preparing cases for trial, Japan was divided into seven districts, which paralleled the Japanese army areas. In November 1945, they were ordered to provide a list of the complete chain of command from the Minister of War to camp commanders. They were again ordered to provide rosters of all POWs held in camps in Japan and the Philippines, a list of those who died in the camps, and a roster of all camp personnel, both civilian and military. 30

The Japanese government admitted in November 1945 that they destroyed records of over 30,000 POWs. The government blamed War Minister Korechika Anami, and stated that the first order to destroy documents was given on 15 August 1945. The Allies demanded a list of all destroyed records and were told this could not be provided. Anami had hoped to conceal the fate of mistreated or murdered POWs. In some instances false reports were prepared to hide the details of especially gruesome cases. The Demobilization Ministries provided reports on ninety-four POW camps. Cross checking statements taken from prisoners during liberation against the list of camps provided by the Japanese government, Legal Section realized that the location of all POW camps had not been reported by the Japanese government. Allied investigators located an additional  

30 Trials of B and C Class Japanese War Criminals, 45.
These discoveries testified to the scale of deliberate deception by the Japanese government. Legal Section dispatched teams to find the unreported camps. Second Lieutenant William Gill, later promoted to Captain, was part of the Investigation Division for Legal Section in Japan. In December 1945, Gill, and his Nisei interpreter Byron Yoshino were part of an investigation team sent to search for unreported POW camps on Hokkaido, Japan’s northernmost island. Gill and Yoshino assessed the conditions at each camp and documented their findings. They also searched unsuccessfully for records or other documents that might be useful in war crimes trials. Gill described the process as frustrating, but stated that he and Yoshino were able to identify several camp personnel suspected of mistreating POWs. Gill’s experience with one of the suspects, a factory supervisor, demonstrates that the Japanese did follow orders to destroy records in order to cover up war crimes. The suspect freely admitted he had burned POW records, and after Gill pressed the issue, insisting that the supervisor perhaps missed some records, the suspect replied “he did a good job at what he was told to do.” Aware of the atrocities committed during the war, Gill worked to find the evidence to bring perpetrators to trial. However, since the United States was determined to model democratic principles and required evidence of crimes, Gill realized that many war criminals would escape punishment. He realized that it was “only winners, who occupied a territory and physically held the offending personnel and their assets, that had the power to determine what enemy actions would, or would not be prosecuted as war crimes.” His critique helps to explain why the United States hesitated to hold trials for bacteriological warfare experiments. In 1947 Gill was sent to investigate experiments

31 Trials of B and C Class Japanese War Criminals, 46-47.
33 Gill, “War Crimes Investigations in Japan,” 3-4. (Italics in original.)
conducted by Unit 731 in Manchuria. After a lengthy investigation, Gill "was ordered to stop the investigation and forget the entire affair, because the information was classified as top secret intelligence instead of war crimes."\(^{34}\) The requirements for evidence to prosecute suspected war criminals and the knowledge that where evidence did exist, other war criminals received clemency created a difficult task for investigators. Gill and Yoshino did contribute to the war crimes effort by uncovering evidence used in the trials, but wished they could have done more to help the victims. Given the number of records destroyed, the frustration in searching for evidence to assist the prosecution is easy to imagine. Gill dedicated his memoir to "those Prisoners of War in Japan, for whom we came too late---we were so very sorry."\(^{35}\)

The war crimes were grouped by type including POW cases, ship transport cases, Kempei Tai cases, airmen cases, and medical cases. Crimes that did not fit into any of these categories were assigned to a miscellaneous grouping.\(^{36}\) The Investigation Division then worked to find evidence to support the prosecution teams. In 1946, Gill was assigned as the investigations area supervisor of cases involving airmen. Of the 2,700 investigations handled by the Investigation Division, 1,000 involved airmen. These cases were prominent because airmen were often the victims of brutal treatment in POW camps. Many were summarily executed. Japanese actions against airmen stemmed from the Doolittle raid in April of 1942. After the raid, the Japanese Army issued the Enemy Airman’s Act of 1942, which permitted the Japanese to try airmen and hand out death sentences. These "trials" did not afford the airmen a defense. Often, they were conducted in Japanese with no translations, and they usually resulted in the beheading of

\(^{34}\) Gill, "War Crimes Investigations in Japan," 51-52. (Italics in original.)
\(^{35}\) Gill, "War Crimes Investigations in Japan," v.
\(^{36}\) Trials of B and C Class Japanese War Criminals, 52.
the "defendant." The treatment of Allied airmen POWs by the Japanese certainly did not adhere to international regulations governing the treatment of POWs. The US hoped that the actions of the Investigation Division provided a contrast, and demonstrated that democratic countries did not summarily execute prisoners but rather relied on evidence and proper proceedings. The US provided defendants translations of all court proceedings. Each suspect was provided with a defense, and evidence was required to support accusations. In the Class BC trials, the United States provided Japanese suspects with rights denied to the captured Allied airmen, demonstrating United States' justice and showcasing Japanese brutality and forcing the Japanese to bend to America's will.

The airmen's cases illustrated the overwhelming amount of work facing the Investigation Division and Legal Section. In order to reduce the workload, the Americans decided to treat all crew members from a downed or missing aircraft as one group, rather than view each airman as a separate case. This greatly reduced the overlap in investigations as shown in Table 3. By October 1947, 1,000 investigations involving airmen had been reduced to 475. Investigations of the other categories of war crimes were considerably fewer. Only the miscellaneous category had a higher number of investigations than the airmen, with 846 active investigations. Even with the consolidation of the cases, the number of investigations of crimes against downed airmen still made up a high percentage of investigations as compared to other types of atrocities. The high number of airmen cases could also suggest that the cases were the most traceable, since the names of crew on downed planes were easily obtained. The brutality

shown towards Allied airmen may have also contributed to more sensational and highly
publicized cases, leading to a greater push to convict those suspected of these crimes.

<table>
<thead>
<tr>
<th>Type of War Crime</th>
<th>Number of Active Investigations (October 1947)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airmen</td>
<td>475 (reduced from 1,000)</td>
</tr>
<tr>
<td>POW Camp Conditions</td>
<td>7</td>
</tr>
<tr>
<td>POW Atrocities</td>
<td>111</td>
</tr>
<tr>
<td>POW Ships</td>
<td>28</td>
</tr>
<tr>
<td>Kempei Tai</td>
<td>31</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>846</td>
</tr>
</tbody>
</table>

Table 3: Active War Crimes Investigations

THE REVIEW PROCESS

Suspects under investigation were held at Sugamo Prison, Tokyo, the same prison
that held the Class A defendants. Sugamo housed approximately 2000 indicted persons
and protected witnesses. The United States, following its plan to model a democratic
society for the Japanese, released many of the suspects due to lack of evidence. The
release of prisoners showed leniency on the part of the United States, and also underlined
its superiority, since the processing and release of prisoners implied the United States had
time to investigate all suspects and did not simply rush them through show trials.
Releasing prisoners without indictment may also have served as a method of
intimidation, since only a strong country could decide to release suspects without trial.

Approximately 1,000 of the suspects went through trials at Yokohama. The majority was
Class C criminals. Approximately thirty were charged with Class B crimes.\textsuperscript{39} Of all the

\textsuperscript{39} Ginn, *Sugamo Prison, Tokyo*, 33-34, 56.
investigations conducted by Legal Section, 371 were prepared for trial. With acquittals, 319 made it to military commissions at Yokohama.

To ensure that the Class BC trials were taken seriously and not rushed through to punish defendants or extract revenge, a thorough review process was applied in each case. The cases were reviewed by the Office of the Judge Advocate General, Eighth Army, and only cases resulting in the death penalty made it to MacArthur's desk. The lengthy review process aimed to eliminate legal errors that may have allowed for prejudice to be introduced. The review process ensured each defendant's rights were protected. By following this process, the military commissions demonstrated fair legal proceedings, and they also avoided potential controversies by allowing the defendants legal rights and review. The process made it more difficult to accuse the United States of conducting unfair show trials, a charge often associated with the Tokyo Trial.

For each trial, the reviewer wrote a synopsis, as well as an opinion and a recommendation to approve or disapprove the commission's ruling. Paul Spurlock, a member of the Review Branch, described the diligence with which the cases were reviewed. "Just as in civil courts where some judges have a reputation for being "'hard'" 'and others for being "'easy,'"' so have there been some commissions whose sentences have been more severe than others." Spurlock described the review process which took steps to avoid criticisms and ensure fair punishments of BC criminals. The Review Branch made sure the SCAP rules were followed, and, considered adherence to the rules of land warfare, the principles of international law, and any other relevant legal precedents. Reviewers discussed their cases with each other, carefully weighing any

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40 Ginn, Sugamo Prison, Tokyo, 56-57.
suggestions, before turning their synopsis, opinion, and recommendation over to the
Chief Reviewer. The Chief Reviewer checked the information and forwarded it to the
Judge Advocate, Eighth Army. The Judge Advocate made his own detailed study of each
case and added his own suggestions. If he did not agree with the recommendation of the
reviewer, he added his opinion and alternative action sheets to the review. Finally, the
review was forwarded for the Commanding General, Eighth Army, for a final decision.
The Commanding General required the Judge Advocate to answer eleven questions
designed to ensure that each defendant received the same considerations. The questions,
organized into four areas, covered the guilt of the accused, the fairness of the trial, the
sentence and issues of clemency, and the sanity of the suspect at the time of the trial and
alleged offenses. The Commanding General then rendered his opinion. If he approved a
death sentence, the review was sent to the Theater Judge Advocate in Tokyo for
additional review before being sent to MacArthur.\footnote{Spurlock, “The Yokohama War Crimes Trials,” 436-437.}

Each of the 319 cases tried at Yokohama went through this thorough process,
which resulted in a number of sentence reductions by Eighth Army Commanding General
recommendations for reductions of prison sentences were suggested in cases in which the
reviewer found no evidence to support the specifics of guilty verdicts, or where the
sentence was believed to be excessive.\footnote{Spurlock, “The Yokoyama War Crimes Trials,” 437.} In some instances, death sentences were
commuted to life in prison or hard labor. Of the 119 death penalty verdicts, seventy
sentences were eventually commuted.\footnote{Ginn, Sugamo Prison, Tokyo, 140.} In instances where the Judge Advocate felt the
sentence was inadequate, nothing could be done since the regulations stipulated that the
severity of sentences could not be increased. The trial of Isojiro Okazaki, Yokohama case number 48, presented such a situation. Okazaki, charged with willfully and unlawfully beating and mistreating POWs by slapping and beating them with his fists, belt, and shoes, was sentenced to two years hard labor. Okazaki pleaded guilty to the two specifications, stating that he struck the POWs in anger. Sufficient evidence supported the case, and the defendant was found sane at the time of the trial. The Judge Advocate found the sentence inadequate stating, “it is not a sentence which is consonant with the requirements of justice.” In this instance, the review process could not result in a change of the sentence, but it did show that the United States followed the regulations it created for the military commissions. It also protected Okazaki from receiving a more severe sentence because the Judge Advocate personally felt that the sentence was too light. Kimura’s case also resulted in a conviction that Eichelberger found to be inadequate. The Commission found Kimura guilty on nine of ten counts, and sentenced him to five years hard labor. In his review statement, Eichelberger said “the sentence is inadequate for the offenses of which the accused was found guilty. However, in order that the accused may not escape punishment, the sentence is approved and will be duly executed.” Again, the review process protected the defendant from receiving a harsher sentence based on one person’s opinion.

At the time Spurlock’s article was published in May 1950, he stated that the War Crimes Division of the Judge Advocate section of the Eighth Army was “making a complete study of all the cases tried to date by the commissions, with the view of

46 United States vs. Yasushi Kimura.
equalizing by reduction of the sentences of some of the early cases that are unduly severe by comparison with those of the later cases.47 Presumably, cases that occurred later in the process had the benefit of a time lapse which allowed for initial anger to cool, resulting in lighter sentencing in later trials. Recognizing this phenomenon, the United States took steps to ensure that it accounted for any bias in the earlier trials by reducing earlier sentences where appropriate. This action again proved fairness as well as leniency towards former belligerents, and ultimately provided an example of a democratic people protecting the rights of others to fair trials.48

VERDICTS AND SENTENCES

In 319 cases at Yokohama, 996 defendants were tried, with 854 convictions, a conviction rate of 86%, although the thorough review process altered some of the sentences. Like the Tokyo Trials, the Class BC verdicts and sentences did not seem to follow a pattern, other than the tendency for commissions to award harsher sentences more frequently in the earlier trials.

The verdicts and sentences of the Class BC prisoners brings up the one major criticism of the Yokohama trials. Given the number of suspects, and the overlap in accusations and evidence, common trials were introduced at Yokohama. The United States was not the only ally to hold common trials, but the number of defendants tried simultaneously was often three to twelve and could rise to fifteen to twenty. In one instance, forty-six defendants faced trial together. Expedited mass trials prevented

military commissions from having to re-hear evidence.\textsuperscript{49} A mass trial saw the highest number of death sentences awarded at Yokohama. In case number 258, forty six defendants were tried and forty-one received death sentences. After the review process, most were commuted to prison terms. Only seven of the forty-one were executed.

Although critics argued that mass trials were unfair, defendants involved in mass trials were more likely to be acquitted than those who stood trial alone. Larger mass trials were more common in later cases, as were acquittals. In the first 160 trials, only nine defendants were acquitted. In the remaining trials, many of which were common trials, 122 acquittals were handed down. Case number 339 saw twenty-six of forty-four defendants acquitted.\textsuperscript{50} The start of mass trials in Yokohama beginning in February 1946 indicated that early on the United States decided that to create peace with Japan, the war crimes trials would need to end. Seeing the common trials as necessary Piccigallo stated:

SCAP and state department officials discerned relatively early that only through expedition of the trials might they ever hope to dispose of their enormous burden within a reasonable time, and thereupon dedicate themselves to concluding a workable, non-punitive peace treaty with Japan.\textsuperscript{51}

While it was important to punish war criminals, the peace treaty with Japan and threat of Communism in East Asia were the foremost concern of the United States. Understanding that the war crimes trials needed to end prior to signing a peace treaty, the United States used mass trials to expedite the process so it could focus on securing Japan as an ally.

As the site of the largest number of war crimes trials conducted by Americans, Yokohama was central for the United States in accomplishing its goal of punishing Japanese war criminals. It also demonstrated that the United States was not simply out

\textsuperscript{49} Piccigallo, \textit{The Japanese on Trial}, 86.
\textsuperscript{50} Ginn, \textit{Sugamo Prison, Tokyo}, 141-175.
\textsuperscript{51} Piccigallo, \textit{The Japanese on Trial}, 95.
for revenge, as evidenced by the relatively low number of death sentences that were handed down and the even smaller number that were actually carried out, as shown in Table 4 below.

<table>
<thead>
<tr>
<th>Number of cases tried at Yokohama</th>
<th>319</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of defendants</td>
<td>996</td>
</tr>
<tr>
<td>Convictions</td>
<td>854</td>
</tr>
<tr>
<td>Acquittals</td>
<td>142</td>
</tr>
<tr>
<td>Death sentences handed out</td>
<td>124</td>
</tr>
<tr>
<td>Death sentences carried out</td>
<td>51</td>
</tr>
<tr>
<td>Life Imprisonment</td>
<td></td>
</tr>
<tr>
<td>41 to 50 years</td>
<td>2</td>
</tr>
<tr>
<td>31 to 40 years</td>
<td>32</td>
</tr>
<tr>
<td>21 to 30 years</td>
<td>80</td>
</tr>
<tr>
<td>16 to 20 years</td>
<td>65</td>
</tr>
<tr>
<td>11 to 15 years</td>
<td>92</td>
</tr>
<tr>
<td>6 to 10 years</td>
<td>141</td>
</tr>
<tr>
<td>5 years or less</td>
<td>255</td>
</tr>
</tbody>
</table>

Table 4: Yokohama War Crimes Trials Sentences

The sentences also prove that, unlike at the Tokyo Trial, defendants were not chosen because their chances of acquittal were slim. Defendants in the Class BC trials were acquitted and their sentences were reduced, neither of which happened for the Tokyo defendants. The more rigorous review process, the stricter guidelines, and the focus on actual perpetrators of atrocities made the Class BC trials much more successful than the Tokyo Trial in accomplishing the goals set out in the Potsdam Declaration.

PRAISE FOR AMERICAN DEFENSE COUNSEL

The defendants and other contemporaries often praised the American defense lawyers for their hard work on behalf of their Japanese clients. One contemporary stated
that the behavior of the American defense lawyers demonstrated, “how seriously defense
counsel took their duties, and how intensely they represented the interests of their former
enemies.” Rear Admiral John D. Murphy stated that “these American defense counsel
ably [sic] carried out their defense duties with initiative, courage and devotion to their
professional obligation to exert every legal effort in behalf of the accused.”

Spurlock stated that the Japanese defendants at first did not trust the American defense lawyers and
expected only a token defense. However, by March 1946, “the opposite was true. Word
had got around that the American advisory defense counsel were performing their task
conscientiously and were effectively presenting the position of the accused to the War
Crimes Commission.” Spurlock went on to describe how the accused often sent letters of
gratitude to their counsel, or sent family members to the War Crimes Commission to pay
their respects, no matter the verdict. One former Japanese major stated in his letter that
he intended to serve his term and upon completion of his sentence would be like other
Japanese who would “spend the rest of their lives teaching Japanese children the true
meaning of democratic justice as it was known under the Stars and Stripes.”

Other letters expressed gratitude for commuted sentences. Suehara Kitamura,
originally sentenced to death, sent thanks to his defense counsel, Mr. Glasser on 6
January 1950. Apologizing for the delay in sending the letter due to lack of a proper
address, Kitamura expressed his “sincerest gratitude for your cordial and endearing
[sic] effort in obtaining the commutation of my sentence, imposed upon me as a result of
my trial.” Kitamura seemed very sincere in his thanks, further stating:

54 Suehara Kitamura to Mr. Glasser, 6 January 1950. Harvard Law Library.
Very happy that I can express my gratitude for your kindness you have shown to me during the whole period of my session and subsequently for obtaining the commutation of my sentence. Unless you did not exert your effort in saving my life, I might have already been executed. Therefore I, at this very moment am trying to express my heartiest and sincerest appreciation for what you have respectably done on my behalf, saving my life...I owe you very much. I will remember your supreme and honorable conduct throughout my life.55

Kitamura concluded his letter by assuring Mr. Glasser that he was fulfilling his sentence faithfully, and believed he would eventually be freed and reunited with his family.

The praise for the American defense counsel, especially from the suspects indicated that those involved did take seriously their role concerning the Class BC criminals, even though they were considered “small fry” compared to the Tokyo defendants. The defendants did not express a sense of “victim’s justice,” a charge lodged against the IMTFE, especially with respect to the inclusion of a judge from the Philippines. It is possible that everyone who expressed their thanks toward their defense counsel was not as sincere as Kitamura appeared. Some prisoners may have hoped for special treatment, early release, or to prove their reform to American captors. The letters indicated the defendants recognized the trial provided an opportunity to defend themselves, a chance that was often denied to Allied POWs. The trials also allowed the hundreds of Japanese defendants the chance to observe western justice and democracy in action.

CONCLUSION

One of the goals of the IMTFE may have been to demonstrate democratic principles to the Japanese, but the lesser BC trials actually provided the better example, since they followed more rigorous judicial standards. The stricter regulations in the

55 Kitamura to Mr. Glasser, 6 January 1950.
December 1945 memo better demonstrated western trial proceedings than the IMTFE, and the review process protected defendants from trial error. Class BC suspects were exposed to American models of democracy for an extended period, as the Class BC trials occurred over a longer time period than the Tokyo Trial. The Class BC prisoners proved, in their campaigns for release, that they had learned and adopted democratic principles. Though the period allotted for war crimes trials ended before all suspects were tried, the Eighth Army at Yokohama remained focused on its goal of providing fair trials, adhering to rigorous policies both during and after the Class BC trials. The United States' efforts to avoid bias in the trials helped to deflect the criticisms that surrounded the Tokyo Trial. Ultimately, the Class BC Trials served as a vehicle for the United States to model western style justice and democracy and demonstrate leniency and superiority to prove the strength of the United States not only to the country it occupied, but also to its Allies and the Soviet Union. This demonstration of power was critical given the tense global political scene, and the United States continued to use the Class BC trials to showcase its strength by ending the trials and pushing for a peace treaty.
CHAPTER IV
THE ROLE OF THE CLASS BC TRIALS IN GLOBAL POLITICS

As tensions mounted between the United States and the Soviet Union in the late 1940s and early 1950s, the United States decided to end the war crimes trials in the Pacific. With the end of the Occupation looming in 1951, the United States was eager to finish the war crimes trials and sign a peace agreement with Japan. In order to ensure that Japan sided with the United States against the Soviet Union, the United States sought to end the Class BC war crimes trials before the peace treaty was signed as a sign of good faith and to demonstrate that the United States had put the events of the war behind it and was focused on the future. Ending the trials also meant that Japan’s debt had been assessed and its people had paid for war time atrocities and could focus on the future.

The United States and Japan signed the peace treaty in 1951, and Japan regained its sovereignty and became the stable ally in East Asia that the United States hoped for. The attitude of the United States towards Japan changed rapidly after the end of the war. In September 1945, MacArthur stated, “Japan will never again become a world power.” He also reported that the Allies would not provide Japan with any supplies or relief during the winter, and that the Potsdam Declaration terms (including the war crimes trials) would be “enforced to the letter.”¹ He predicted an Occupation that would take “many years.” One year later, he described Japan as caught in an ideological conflict, a country that could be “either a powerful bulwark for peace or a dangerous springboard for war.”² By March 1947, MacArthur began discussing peace treaty options claiming

that the framework for democracy had been established in Japan. In August 1947, MacArthur returned control to the Tokyo government and assumed a role of "protection and friendly guidance rather than to continue to enact the role of an occupying army." This development was essentially a "peace without a peace treaty." Concerns arose that the policy might anger Pacific allies including China and Korea. However, since those nations did not contribute money or manpower to the Occupation, the United States made the final policy decisions. On 2 March 1949, MacArthur pledged to defend Japan in case of attack, and described Japan as the "Switzerland" of the Pacific. He continued to push for a peace treaty throughout 1949, arguing that the Occupation goals had been achieved in 1947. MacArthur's attitude towards Japan highlighted the rapidly rising tensions between the United States and Soviet Union. The United States' willingness to alienate its Allies during the Occupation also suggests confidence on its part and the importance of East Asia in the fight against Communism.

The issue of the peace treaty also created tensions within the United States, particularly between the State Department and the Department of Defense. At a meeting on 24 April 1950, the State Department argued that a peace treaty was essential, while the Department of Defense countered that a peace agreement could provoke the USSR. In his memoirs, policy advisor and later Ambassador to the Soviet Union George F. Kennan stated that he believed the USSR orchestrated the attack on Korea due to the discussion of a peace treaty between Japan and the United States. This statement appears to support...
the Department of Defense's stance on the peace treaty, but as Richard B. Finn points out in *Winners in Peace* the timing poses a problem. While some, like MacArthur, pushed for a peace treaty, in June 1950 the United States had not made a definite decision. The outbreak of the Korean War changed the situation and led MacArthur to order the limited rearmament of Japan. Due to their distrust of Japan, the United States' Pacific Allies including Australia were opposed to rearmament. Prime Minister Shigeru Yoshida had also opposed Japan's rearmament in favor of economic recovery. John Foster Dulles, the principal negotiator for the peace treaty, hoped the Korean War would make the Japanese aware of their responsibilities as a nation of the free world. MacArthur expressed a similar viewpoint in December 1950, when he stated that it was Japan's duty to "join the free nations and mount force to repel force." He believed that after the treaty Japan would "exercise a profound influence upon the course of destiny in Asia." The Korean War helped persuade Japan to rearm and also highlighted the United States' need for a stable ally in East Asia. While tensions remained between the Allies in the Pacific, it helped to convince some Allies that a peace treaty was needed. Perhaps most importantly it was a clear example of the threat posed by Communism.

In a letter to Prime Minister Shigeru Yoshida on 20 August 1951, only a few weeks before the treaty was signed, MacArthur wrote "Japan will reassume a position of dignity and equality within the family of nations and take a firm and invincible stand with the free world to repel those evil forces of international Communist tyranny which seek covertly or by force of arms to destroy freedom." His comments, a far cry from those

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made just after the war, reflected MacArthur’s change in opinion regarding Japan and demonstrated the shift in the United States’ focus to the containment of Communism.

The United States pursued Japan as an ally in the fight against communism. Ending the war crimes trials was crucial to closing the chapter of the war and proceeding to address United States’ concerns in the late 1940s and early 1950s.

THE END OF THE TRIALS AND THE SAN FRANCISCO PEACE TREATY

By January 1949, the United States began to take steps to end the war crimes trials. A message to the Commander in Chief, Far East dated 29 January 1949 ordered that no more Class A trials take place, and if possible investigations for Class BC trials be completed by 31 March 1949, with trials concluding before 30 September 1949. At Yokohama, the trials ended in October 1949.

Peace with Japan and the end of the Occupation presented challenges to the United States. The United States strove for “maximum and exclusive control over potentially dangerous allies,” primarily the Soviet Union. The United States recognized that Japan was the only country in East Asia that had the potential to gain great power status. The United States had no allies in East Asia during or immediately after World War II and, therefore, sought to “win Japan” as an ally against Communism. At the same time, the United States wanted to refrain from any agreements that would require its involvement in unwanted wars in the region. In order to avoid wartime obligations, the United States opted to create a bilateral alliance with Japan that would ultimately allow it

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12 Commander in Chief, Far East from DA, January 29, 1949. MacArthur Memorial Archives, Norfolk, VA, Record Group 9, Box 160, Folder War Crimes 221-320.
14 Cha, “Powerplay,” 159-160.
to "rebuild the country on an anticommunist bulwark." George Kennan described Japan as "the key to Asia, just as Germany was the key to Europe."\textsuperscript{15} The peace treaty then was an important component of American strategy in the post war world.

The peace treaty signed in San Francisco on 8 September 1951 by forty eight countries demonstrated unity among the Allied nations. It also ensured Japan's adherence to anti-communism, a stance the United States had worked to cultivate since the end of the war. Japan renounced all claims to former territories including Korea and Formosa, and agreed to enter into negotiations with Allied nations on various topics such as fishing rights, commercial interests, and reparations.\textsuperscript{16} In return, Japan received full sovereignty, and the American occupation ended.

The treaty however placed Japan in a difficult position within East Asia and showed the United States as a country driven to contain Communism without much regard for its Allies and their concerns. Among the forty eight signatories to the treaty, the Soviet Union and China were absent. Therefore, Japan remained, technically, in a state of war against those two countries.\textsuperscript{17} Japanese rearmament brought complaints from US Allies including Australia, New Zealand, and the Philippines. American assistance to Japan led those countries to complain that the United States treated its former enemy better than its old, steadfast friends.\textsuperscript{18} Even the principal ally of the United States, Great Britain, disagreed with aspects of the treaty. John Foster Dulles did not invite the Chinese Nationalists to the peace conference. The United States ignored Britain's

\textsuperscript{15} Cha, "Powerplay," 181-182.
\textsuperscript{18} Farley, "Japan and US: Post-Treaty Problem," 34.
opposition to this, straining Anglo-American relations to secure an agreement that would
“almost inevitably lead Japan to align herself with the United States.”

Even with the objections of close Allies, the Communist threat, and possibility of
a renewed war between Japan and the Soviet Union, the United States still signed the
peace treaty. This created a co-dependent situation in East Asia. Japan needed protection
and support from the United States, especially while rearming itself, and the United
States needed the cooperation of Japan to face the Communist threat in the region. It is
interesting though, that the United States sought to sign a treaty and end the Occupation
when Japan was still in a weakened position, especially in the face of the objections of its
Allies. Fear of a prolonged Occupation may have played a role in the decision to sign the
treaty. MacArthur warned that a prolonged Occupation would prevent genuine
reconciliation with Japan. While the Japanese cooperated with Occupation forces, the
potential for rebellion existed. Exasperation with continued orders from Americans could
have allowed anti-American influences, proliferated by the Communists, to spread. The
United States perhaps thought it best to proceed with the peace treaty rather than risk the
Soviet Union gaining a foothold in Japan by provoking anti-American feelings. It was
also best not to excite any anti-American feelings in Japan while the Korean War was
being fought, since Japanese Communists hoped that their position in Japan would be
strengthened by a North Korean victory. Yoshida and Emperor Hirohito expressed their
confidence in an American victory in the conflict.

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treaty by proving Japan to be a cooperative partner in the fight against Communism, Yoshida agreed to limited rearmament of Japan.

The attitude of the United States in signing the San Francisco Peace Treaty reflected the continuation of the pragmatic, goal oriented policy toward Japan. Since the end of the war, during the Occupation, and during the war crimes trials, the United States strove to obtain an ally in East Asia. Although the peace treaty created potential for problems down the road, it was signed to secure Japan’s friendship and create dependency on the United States and was touted as a “great demonstration of Allied unity.”24 The Soviet Union and Communist China’s objections to the treaty were ignored, and the United States pursued its own path. The treaty demonstrated that the United States’ ambitions during the Occupation process had come to fruition, and with Japan as an ally the United States could focus on containing Communism in the region.

PROTESTS AGAINST THE EARLY RELEASE OF JAPANESE WAR CRIMINALS

Prior to the signing of the San Francisco Peace Treaty, on 7 March 1950, MacArthur established a parole board in Tokyo, granting it authorization to reduce the prison sentences of Japanese war criminals. A memo to MacArthur described the Board of Parole as an opportunity for convicted Japanese war criminals to demonstrate that they had served “well and orderly their sentences in prison and rehabilitate themselves physically, morally, economically, and socially, thus enabling them to return to, and become again worthy members of human society,” which was “in full accord with the

principles of modern penology." As in the Class BC trials, the process of parole for each prisoner followed a system that allowed for fair treatment and the possibility of parole for each prisoner. Circular No. 5 established the uniform system for Japanese war criminals and established policies for awarding confinement credit, good time credit, and parole. Confinement credit deducted any time served as a suspect or a prisoner from a prisoner’s sentence. Good time credit, which was not applicable to those sentenced to life imprisonment, allowed those who “faithfully observed all of the rules and regulations at the place or places in which he is or has been confined and has not been subjected to disciplinary punishment” to receive a reduction in his sentence. The longer a prisoner’s sentence, the more days he was eligible to receive per month for good behavior. Those sentenced for six months to one year could receive five days each month for good behavior, while those sentenced to ten years or more were eligible to receive ten days a month off their sentence. It was also possible to restore good time credit to a prisoner’s sentence if he violated prison rules. War criminals who observed all the rules and regulations became eligible for parole. The board considered several factors when verifying the eligibility of prisoners for parole, including the record and facts of the trial, the behavior, attitude, and work record of the prisoner, age, physical and mental condition, as well as the financial status of his family. The Circular described other issues relating to the release of war criminals, such as actions allowed by the Board, supervision of parolees, and the revocation of parole.26

Allowing the early release of war criminals continued to promote the sense of the United States’ goodwill towards the Japanese. MacArthur’s decision to create a parole

26 Trials of B and C Class Japanese War Criminals, Tokio [sic], 238-243.
board however led to a backlash from the Soviet Union, which claimed MacArthur had violated the charter of the IMTFE as well as the Far East Commission directive of 3 April 1946 that required consultation among members of the FEC prior to issuing directives. The United States countered that MacArthur, as SCAP, was the “sole executive authority for the Allied Powers in Japan” and had “the responsibility for the various matters pertaining to the execution of the sentences of the International Military Tribunal for the Far East, including the granting of parole to war criminals tried by that court.” Since the Soviet Union was involved in the IMTFE, its anger focused on the release of Class A prisoners, namely Shigemitsu, Hiranuma, and Araki. The United States government stated that MacArthur’s actions conformed to the agreements cited by the Soviet Union, and were “in accord with enlightened practice in various countries with respect to the treatment of convicted criminals.”

Granting early release of convicted criminals of Class A and Class BC crimes was simply another way to demonstrate the “enlightened” practices of democratic countries. It also placed the United States in a favorable light compared to the Soviet Union, which sought to keep remaining prisoners in custody.

The United States postponed sending a formal reply to the Soviet Union regarding the early release complaint for several weeks. In their response in early June of 1950, the United States reiterated MacArthur’s authority to parole Japanese war criminals and claimed the Soviet Union was “guilty of a fundamental error if it confused parole with a change in the sentence imposed by the military tribunal.” The State Department went on to define parole for the Soviet Union as permission for a “convicted criminal to serve part of his sentence outside of prison under certain conditions and controls subject to being returned to prison for serving the remainder of the sentence if the conditions of parole are

violated.” The United States government chastised the Soviet Union for addressing their original communication to the United States and not to the FEC, since the questions it raised fell under the FEC’s jurisdiction.28

The situation regarding Japanese war criminals’ parole highlights the tension between the United States and the Soviet Union. The early release of war criminals led the Soviet Union to accuse the United States of aggressive policies in Asia and an attempt to remilitarize Japan. An article appearing in the Soviet newspaper Izvestia described the policy of parole as reflecting “the whole aggressive character of American policy, in the East as well as the West, preparatory to unleashing a new war.”29 The Soviet Union likely viewed the release of prisoners as part of the United States’ process of remilitarization and therefore a threat toward Communism in East Asia. This accusation did not deter the United States from its plan for the early release of convicted war criminals, and by 1958 the last war criminals were released. The strong-willed US response demonstrated American power to the Soviet Union and to Japan as well, which would realize it was aligning with the superior ally.

The last criminals to be released were ten Class A prisoners: Araki, Hata, Hoshino, Kaya, Kido, Oka, Oshima, Sato, Shimada, and Suzuki. These ten, who had received life sentences from the IMTFE, were set free after Premier Nobusuke Kishi visited Washington in 1957 and requested clemency. Following the San Francisco Peace Treaty’s stipulation that clemency could only be granted after consulting the majority of the governments involved in the IMTFE, the United States discussed the request with Great Britain, Canada, France, the Netherlands, Australia, New Zealand, the Philippines, 28 “U.S. Chides Soviet On Parole In Japan,” New York Times, June 9, 1950.
29 “Remilitarization Charged,” New York Times, June 9, 1950,
and Pakistan. Since the Soviet Union, China, and India did not sign the San Francisco Peace Treaty, they were not consulted. The various governments agreed to the request, and Japanese war criminals' parole was effected.\textsuperscript{30} For the Class BC prisoners, tried by US military commissions, only US approval was needed.

DEMONSTRATIONS OF WESTERN STYLE JUSTICE AND DEMOCRACY

With trial procedures clearly detailed, the military commissions were in a position to demonstrate the Western justice system and the principles of democracy for the Japanese. Modeling these ideas was a main goal of the Occupation and the trials provided the perfect vehicle. However, the Americans stationed at Sugamo Prison also demonstrated principles they hoped the Japanese would adopt. Yoshio Kodama, a Class A suspect held at Sugamo Prison, who was released without trial, describes the American GI's stationed at Sugamo in a positive manner. American soldiers displayed courtesy and consideration towards the Japanese prisoners, the opposite of what Kodama expected. Kodama described a situation in which he had to carry a heavy load. He stated Japanese prison guards would have yelled at him for having difficulty, but the American guards found people to assist Kodama in his task.\textsuperscript{31} The prisoners were also allowed to observe traditional Japanese holidays and informed of major events occurring within their families. In Kodama's case, he was informed of the birth of his daughter, and was even given assistance in choosing her name, something he says would not have occurred in a Japanese run prison.\textsuperscript{32}

\textsuperscript{31} Kodama, \textit{Sugamo Diary}, 2.
\textsuperscript{32} Kodama, \textit{Sugamo Diary}, 40, 88.
At one point during the summer, Kodama took a bucket of water to the exercise yard to try to settle the dust and create a more pleasant atmosphere. An American MP, noticing his actions, said it was not fair for one person to take on the task, and suggested a rotation system. Kodama thought that the attitude of the MP reflected a "real sense of democracy" and the fact that a common soldier possessed such a sense of justice should be a lesson to everyone.\(^{33}\) Kodama also described American interrogators as polite and sticking to questions of fact, even when an interrogation lasted for several hours.\(^{34}\) Kodama's description shows that Japanese prisoners noted the actions and attitudes of their American captors. At the same time, including statements in his diary praising American soldiers was most likely beneficial to Kodama. Such statements demonstrated a respect for the occupying authorities. They also promoted the sense of Kodama's rehabilitation and desire to learn the democratic ways of the United States, a good attitude to adopt during the Occupation. Kodama's diary did not always praise the United States so highly, but these comments were nonetheless self-serving to some extent.

Kodama said that Class C prisoners did not necessarily receive the same polite interrogations as Class A suspects. A Class C suspect described a prosecutor making threatening gestures, something Kodama and the other Class A suspects did not experience. The Americans though, according to Kodama, conducted more humane trials than the British and allowed suspects to have their say in a formal trial.\(^{35}\) His opinion though, must be carefully scrutinized. Since the United States was in charge of the Occupation and held the greatest power, it was in Kodama's best interest to support the

\(^{33}\) Kodama, *Sugamo Diary*, 117.
\(^{34}\) Kodama, *Sugamo Diary*, 107.
\(^{35}\) Kodama, *Sugamo Diary*, 128-129.
Americans, especially once they began releasing Class A suspects without trial. Critics argued the British trials were too harsh and decried the treatment and sentencing of suspects. Public protests were held against the British military commissions for sentencing suspects to death in cases where they accused had not been proven guilty of murder. Piccigallo however, states that the British war crimes trials were “conducted with admirable seriousness and care” and the British legal officers “performed admirably, evincing a generally high standard of competence and dedication.”

Kodama relied on talk amongst the prisoners to make his claim concerning British brutality. He had no interactions with the British would not have felt the need to speak so positively about them as he did about the Americans.

The war crimes suspects of all three classes had many opportunities at Sugamo to mingle and share their opinions. Kodama’s diary offers insight into the attitudes of suspects about the Class C trials. Many prisoners seemed to think the trials were an empty formality, although Kodama believed this attitude was due to the fact that many suspects claimed to be innocent. Another Class C suspect, however, said the trials were fair, and the men deserved their sentences. An acquitted Class C suspect also believed that most people deserved their accusations, and also described the trials as fair and the investigations as thorough. Sandra Wilson, one of the few scholars who examines the Class BC criminals, describes the writings of the BC prisoners wherein they make claims of unfair treatment. One prisoner, “Sergeant Akagi” stated that BC prisoners were given less food than other prisoners. Another memoir written by a Class A prisoner, Ryoichi

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37 Kodama, *Sugamo Diary*, 59-60, 64, 137.
Sasakawa described the food shortage as a result of the unfair distribution of food by the prisoners themselves, as well as the greedy appetites of the "senior prisoners." Like Kodama’s memoir, Sasakawa’s must be carefully scrutinized, although for different reasons. Unlike Kodama, Sasakawa hoped to be imprisoned and appeared to be on a self-prescribed mission to "explain without hesitation that Japan did not wage a war of aggression." Sasakawa believed that he alone had "the confidence to convince the people of the world." He did however, offer some insight to the Class BC prisoners. Sasakawa described the POW prisoners as afraid of interrogations, because they were nervous "that their criminal deeds would come to light." His opinion of the trials was often negative and he believed the United States sought revenge through the trials. His self-righteous diary offered a great deal of advice to the United States on how to handle the trials, the Occupation in general, and reasons for fighting Communism.

Kodama did not believe the war crimes trials necessarily benefitted the United States, and his opinion of the trials evolves throughout his diary. He presents an overall picture of life in Sugamo and an admiration for the attitudes and actions of the American soldiers. He also makes it clear that American GI’s were committed to modeling appropriate behaviors for the Japanese prisoners and those behaviors were noticed by the war crimes suspects. Some of the Class BC prisoners at Sugamo displayed democratic behaviors themselves, hoping to prove that some Japanese were adopting democratic attitudes and principles.

The writings by BC prisoners Wilson studied, as well as the memoirs by Kodama and Sasakawa offer a mixed assessment of life in Sugamo Prison. Unfair situations

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39 Sasakawa, Sugamo Diary, 80-82.
40 Sasakawa, Sugamo Diary, 80.
41 Sasakawa, Sugamo Diary, 45.
described by some prisoners existed alongside the democratic or sympathetic situations Kodama described. Some suspects were wrongly accused and held in prison, while others had committed crimes and had reason to fear the interrogations Sasakawa described. The writings were most likely geared towards creating sympathy for the author, especially those articles penned by Class BC prisoners who wished to make clear that they were just following orders and were therefore not guilty of committing war crimes. Memoirs by Class A prisoners such as Kodama and Sasakawa have been translated into English, and these works tend to reflect more positively on the United States. Diaries of Class BC prisoners, such as those used by Wilson have not been translated. The works available to English audiences indicate within Sugamo Prison various attitudes were exhibited, but overall, the Americans modeled democratic principles.

CLASS BC PRISONERS DEMONSTRATE DEMOCRATIC PRINCIPLES

Since the Class BC trials spanned a longer time frame than the Class A trial those prisoners were exposed to American Occupation officials longer than the Class A suspects. There were far more Class BC detainees than Class A detainees, which resulted in a higher number of BC prisoners who learned and practiced, at least to some extent, the democratic principles the United States had hoped to inculcate.

Although the San Francisco Peace Treaty restored Japan’s sovereignty, it included a clause concerning condemned war criminals. Article 11 stated that the sentences of convicted Class BC war criminals could only be commuted by (or with the consent of) the prosecuting country. The article was surprising, since the Americans began a parole
system in 1950 to release prisoners. In 1952, China released its prisoners in Sugamo under general amnesty. Since many war criminals had been released, further clemency was expected, and Article 11 withheld the right to grant clemency from the Japanese government. This did not deter the imprisoned war criminals, as they petitioned the Japanese government “to take up their cause, insisting that the government should cease to subordinate itself to the victors in the Second World War.”\(^{42}\) The prisoners’ call to remove Japan from what they viewed as a position of subordination to the United States suggests that some Japanese were not happy with the situation in which they found themselves and wished the government would adopt a stronger role in the post war world. While the Class BC prisoners may not have agreed with the relationship between Japan and the United States after they signed the treaty, the prisoners used American values such as freedom of speech and freedom of the press to accomplish their goal of encouraging the government to distance itself from the United States.

The Japanese government did not object to Article 11 of the peace treaty which caused extensive prisoner frustration at the time the peace treaty was signed. In March 1952, the prisoners formed a committee to lobby for their release and create public sympathy. The general public appeared to support the inmates, as millions of Japanese citizens signed a petition for their release, and many people, including high profile entertainers and politicians visited the prison to show their support. Visits by politicians showed that the government changed its stance. Prisoners were able to meet with the politicians, including cabinet ministers and the Chief Justice of the Foreign Ministry, to make their cases heard. These meetings allowed the prisoners to be directly involved in politics and fight for release, but it also demonstrated that the Japanese government was

\(^{42}\) Wilson, “Prisoners in Sugamo and their Campaign for Release,” 172.
invested in the issue.\textsuperscript{43} This was a development the United States needed to consider. As early as August 1952, an article published in the Japanese Bar Association journal warned that the continued retention of convicted war criminals would endanger the treaty. It also warned that retention could turn the inmates into heroes, since public opinion was moving in favor of the prisoners’ release. If the prisoners were turned into heroes, then the Japanese could become hostile to the United States, which would only help the communist cause.\textsuperscript{44} The United States, wishing to avoid such a situation, continued with the early release of convicted war criminals.

The involvement of the convicted men in public politics, and their campaign for release was an early demonstration that democratic principles were understood and employed among the Japanese to further their own cause. Public opinion regarding Japanese war criminals began to shift in the early 1950s as the population began to see the Class BC prisoners as soldiers who were caught in circumstances beyond their control. Those Class BC prisoners held at Sugamo used the changing opinion to their advantage. Capitalizing on their freedom of speech, they wrote letters and articles to the press, to gain sympathy or clemency.

The outbreak of the Korean War caused a shortage of American soldiers, and the American Occupation government began to turn control of Sugamo Prison over to the Japanese in August of 1950. American officers supervised the Japanese wardens. Captain Lonnie Adams gave the prisoners two options: they could govern themselves, or they would have to remain locked up due to the shortage. The prisoners elected to govern themselves, which they accomplished with no major disciplinary problems. As

\textsuperscript{43} Wilson, “Prisoners in Sugamo and their Campaign for Release,” 178-181, 184.

\textsuperscript{44} Wilson, “Prisoners in Sugamo and their Campaign for Release,” 179.
the Korean War continued, American personnel were phased out of Sugamo and replaced by Japanese personnel. With the signing of the peace treaty in 1951, control of Sugamo was turned over completely to the Japanese. 45

With the American establishment of the parole system in 1950, the changing public opinion regarding war criminals, and the turn Sugamo to Japanese management, the Class BC prisoners began to press their government for release. In addition to the letters, articles, and prisoner testimony, the inmates published their own newspapers. One newspaper in particular, Sugamo, published from November 1952 to March 1953, concerned itself with early release. Soon after the peace treaty was signed, many organizations began to campaign on the behalf of or in support of the inmates, and Sugamo focused on these activities as well as the peace treaty. 46 Various women’s organizations offered tea ceremony classes to the prisoners, university professors delivered lectures, and tourist groups actually visited Sugamo after the Japanese took control. Businesses also supported the prisoners with donations, which included two television sets. 47 Sugamo reported on these activities, in addition to the activities of the prison committee arguing for early release. 48 Growing public sympathy for imprisoned war criminals was clearly demonstrated by these businesses and organizations. Releasing prisoners demonstrated the United States was attuned to the public opinion of its new ally and willing to cooperate in matters that were important to Japanese people. These actions also showed the Japanese that the United States was a cooperative ally, although both

46 Wilson, “Prisoners in Sugamo and their Campaign for Release,” 176-177.
countries realized the importance of their alliance and likely would have ignored small areas of disagreement such as the release of convicted war criminals.

The inmates at Sugamo used their freedom of speech, freedom of the press, and their connections to politicians and government leaders to push for their release. They encouraged the Japanese government to act as a sovereign nation and take control of the war criminal situation, garnering public support for their cause along the way. The actions of these prisoners, and the show of public support, especially concerning the widespread petition for their release showed that the United States accomplished its goal of establishing American values such as the freedom of speech and support for fundamental human rights as stated in the Potsdam Declaration.\footnote{Potsdam Declaration, Article 10.} The last war criminal was released in 1958.

CONCLUSION

While the Class BC trials of the "small fry" were not considered as important as the Class A trial, the United States did use the lesser trials to its advantage. Ending the trials demonstrated goodwill towards the Japanese. The early release of convicted war criminals, over the protests of the Soviet Union, demonstrated leniency and strength. Even though the Class BC trials did not occupy the limelight, they still proved useful to the United States in its single-minded pursuit to contain Communism in East Asia.

The Class BC prisoners demonstrated that the United States had in fact instilled an appreciation for democratic principles in the Japanese. It is difficult to determine to what degree western principles were imbibed among the population so soon after the end of the Occupation, but the early release campaign suggested that western ideas such as
the freedom of speech and the freedom of the press were adopted, at least on some level, by the Japanese. The prisoners' use of their rights and the signing of the peace treaty demonstrated the United States' success in Japan after the war. The Class BC trials were only one of the United States' tactics. However, these often-ignored trials accomplished more than the Tokyo Trial, and were used in the global political arena to prove to Japan that wartime atrocities were in the past and that, with the signing of the peace treaty, Japan could look towards a democratic future with powerful new allies.
CHAPTER V
CONCLUSION

The Pacific war crimes trials led the Allies into unprecedented situations. The trials marked the first time high ranking officials were removed from their posts, and the first time they were tried for aggressive warfare and crimes against humanity. The United States entered into the Pacific trials intending to punish those who committed atrocities during the war. Instead, rising Cold War tensions overshadowed the trials and in the case of the Tokyo Trial, took focus away from that goal. The Tokyo Trial became less important to the United States as it became more focused on its own agenda, demonstrating its strength to the Soviet Union and pursuing Japan as an ally against Communism in East Asia.

According to Pritchard, in addition to the primary goal of identifying and punishing major war criminals, the Tokyo Trial had a secondary goal to morally reconstruct the Japanese people, and the world in general.¹ Until the Tokyo Trial, much of the Japanese public was unaware of the actions of their government and military during the war. The education of the public on the events in the years prior to and during the war was the greatest accomplishment of the Tokyo Trial. Due to the immense trial record which detailed Japan’s role in the war for the population, the United States and its Allies could take “reasonable satisfaction” from the education the trial provided for the public.² Given the clemency offered to General Ishii and the refusal to try Emperor Hirohito, the United States cannot be said to have successfully accomplished the primary goal to punish Japan’s major war criminals.

Michael Bess offers a positive perspective on the Tokyo Trial. Though at the time, setting precedents for international law and future international tribunals was not necessarily an explicit goal of the Tokyo Trial, those involved were aware of the potential impact of their actions. Bess states:

The trials need to be understood not just as the concluding acts of World War II, but as the catalysts of a revolutionary shift in the defense of basic human rights. Bringing men like Goring and Tojo to justice was vitally important, but more important still was the laying of legal and institutional foundations for dealing with the crimes of future Gorings and Tojos who might arise in later generations. Herein lies the trials' real historical (and moral) legacy: they constituted a qualitative leap toward a truly global system of justice.  

The Tokyo Trial was part of a process that included the creation of the United Nations and development of new international treaties such as the Universal Declaration of Human Rights that sought to protect humanity against the horrors that occurred during World War II.

Bess believes the Tokyo (and Nuremberg) Trials were not simply show trials. He sees them as contributions to international law, allowing for some positive legacy. The accomplishment of the Class BC trials at Yokohama was the punishment of war criminals who were personally responsible for committing atrocities. This opinion was voiced as early as 1950 in Robert A. Fearey's work on the Occupation of Japan from 1948 to 1950. Without the publicity of the A trial, the military commissions at Yokohama could focus on delivering fair punishment for war crimes.

While the members of the military commissions at Yokohama could be appointed by any Allied state, most commissions were composed of American members. The absence of other Allied countries, most notably the Soviet Union, removed tensions from

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the court room and allowed the commissions to concentrate on the trials before them, rather than on the assertion of their power in the post war world.

There were many things to take into consideration after World War II. The war crimes trials, especially the BC trials, were only part of the rebuilding process in Japan. The BC trials in particular, while given little publicity, did play an important role in the end of the Occupation and subsequent peace treaty between Japan and the United States and other Allies. Since the Tokyo Trial was over by the time serious peace treaty considerations arose, it could not be used to further the interests of the United States. Class BC trials were still in session however, and by ending the trials the United States could demonstrate good faith and a willingness to cooperate with its former enemy. Once the Yokohama trials ended, as an additional show of cooperation and perhaps in response to public opinion in Japan, the United States allowed for the early release of convicted war criminals. Perhaps because the Class BC trials were considered unimportant, the United States could use them as a concession to the Japanese without actually forfeiting anything of value.

Wilson’s recent research also suggests that the Class BC trials accomplished more in teaching the Japanese American democratic values. The issues surrounding the Tokyo Trial raised doubts about the legitimacy of the trial itself as well as courtroom procedure, reducing the credibility of claims about the democratic principles modeled for the Japanese. The BC criminals sentenced to prison terms used American ideals in their quest for early release from prison.

There remains a great deal of research to be done on the Pacific war crimes trials, particularly the Class BC trials. Fearey stated the importance of the Class BC trials over
the Tokyo Trial in 1950, but shortly after his claim the Class BC trials were almost completely forgotten. Overshadowed by the drama of the Tokyo Trial, the records of the trials at Yokohama offer a look at how the United States worked quietly to rehabilitate Japan and model principles they hoped would take hold among the population. Though the Tokyo Trial was touted as the most important war crimes trial in Japan, it was more the showy end to World War II in the Pacific and a public spectacle that marked the end of Japan’s militaristic era. The long ignored trials of the “small fry” were more successful and important in shaping the tense post war era.
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