

The Tokyo Tribunal: Precedent for Victor's Justice II

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ABSTRACT

Besides, previous publication of Nuremberg Tribunal: A Precedent for Victor's Justice (2020), the study is named as The Tokyo Tribunal: Precedent for Victor's Justice II. The bombings at Hiroshima and Nagasaki were heinous crimes against humankind that caused physical, material, socio-cultural, and emotional losses. The bombings violated humanitarian law. This paper aims to find out the situations of the investigation, prosecution and punishment, and analyse the preference for justice: victor's justice or victim's justice. During World War II, anti-communist Emperor Hirohito actively led Japan decorated by the Army's uniform but pretended to be a ceremonial Emperor making scapegoats to his opponents. Former Prime Ministers Konoe and Tojo were conspiratorially assassinated. Hirohito bribed callous US Army General Douglas MacArthur. MacArthur ordered to gather testimonies to prove Hirohito as innocent. The Tokyo Tribunal was biased since it did not speak a word against the indiscriminate bombings and mass killings in Chinese cities, among others. The Tribunal had a pseudo justice body, highly influenced by the US military and retributive justice doctrines. Judges were appointed from each allied victor excluding from Japan. Five of the 11 Judges submitted separate opinions on their judgment. Justice had been elusive for the innocent, weak, and poor victims. Most crimes committed went unpunished. The Tribunal ironically ensured the victor's justice, further limiting the victim's justice. Thus, the Tribunal appeared as a sword in a judge's toupee.

Keywords: Hiroshima, Nagasaki, victor's justice, victim's justice, Tokyo tribunal, World War II, Emperor Hirohito and war crimes.

INTRODUCTION

Seventy-six years have already passed since the atomic bombs had been dropped on Hiroshima and Nagasaki. While a trusted few warned US President Harry S. Truman stating that horrific casualties to US soldiers will happen any time in Japan, Truman delivered an order to use new weapons or test atomic bombings, passing the war to a speedy end (www.history.com/topics/us-presidents/harry-truman). On August 6, 1945, at 8.15 am, the United States became the first nation to drop an atomic (B-29 Superfortress bomber) bomb on the Japanese city of Hiroshima (Streifer, August 2017). At 2.47 am on August 9, 1945, another atomic bomb was dropped at Nagasaki (Rezelman et al., 2000). Seventeen hundred tons of bombs were dropped in densely populated areas of twelve square miles. Those two bombings

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extrajudicially killed between 130,000 to 226,000 people, mostly civilians (Vance, August 14, 2009). It resulted in as many as 100,000 immediate killings, tens of thousands more died in the following weeks from injuries and radiation poisoning, over 40,000 wounded, more than 1,000,000 made homeless, and above 267,000 buildings, including houses destroyed (Vance, August 14, 2009). Fearing possible further bombings, Japan announced its surrender (Tomonaga, December 2, 2019; Vance, August 14, 2009), six days after the second bombing. And the end of World War (WW) II was formally declared.

Five to six years after the bombings, the incidence of health damage increased noticeably among the victims or survivors. They were: the appearance of leukaemia - the first malignant disease in 1949; development of many types of cancer (McCrary & Baumgarten, 2007); and finally lifelong cancers for those who experienced the bombing as surviving children (victims) and psychological damage - depression and post-traumatic stress disorder and other chronic diseases (Tomonaga, December 2, 2019; ICAN, undated).

The International Military Tribunal for the Far East (IMTFE), known as the Tokyo Military Tribunal (the Tokyo Tribunal) was established by the Allied Victors (forces) of WW II against the leaders of the Japanese Empire in April 1946. That was also known as the Tokyo war crimes Tribunal (Hosch, September 8, 2020). The retroactive and selective allied victor signatories were: Australia, Canada, China, France, British-India, the Netherlands, New Zealand, Philippines, the Soviet Union, the United Kingdom, and the United States of America. Each of these countries had a separate prosecution team member (Kaufman, 2013). The allied victors appointed US Army General Douglas MacArthur as the Chief to the Tokyo Tribunal on January 19, 1946 (Kaufman, 2013). The Tokyo Tribunal marked a changing point of classical law doctrine to the contemporary, transitional justice body.

This paper aims to thoroughly study the works of the Tokyo Tribunal investigating the axiomatic truth of war of aggression, war crimes, and crimes against humanity that occurred during WW II. It analyses a set of judicial measures of systematic human rights violations or human wrongdoings and reviews them critically.

The general objective of the paper is to investigate the truth of crimes seriously examining the specific contribution made by the Tribunal and their critical perceptions argued by victims, commoners, leaders, eyewitnesses or survivors, perpetrators, judges, and academia inland and beyond.

The specific objectives of the paper are to identify the post-war situations of Japan; to analyse how the Tokyo Military Tribunal was established; to determine the process of investigation, prosecution and punishment on suspects or alleged perpetrators; and to examine the preference for accountability and justice: victor's justice or victim's justice prepared, initiated and adopted by the Tribunal.

This is a state-of-the-art paper. The study is pursued based on the archival research with lessons-learned centric conceptions following the network tracking method or snowball techniques. The descriptive-cum-analytic paper briefly adopts loser/victim-centric and reader-friendly approaches respecting humanitarian law and laws of war. Author's 132nd international publication, named *Nuremberg Tribunal: A Precedent for Victor's Justice*, published

by the TRANSCEND Media Service as a Featured Research Paper on September 21, 2020, has been Guru (guide) to accomplish this theme. Thus, the paper is entitled *The Tokyo Tribunal: Precedent for Victor's Justice II*.

FINDINGS OF VICTOR'S JUSTICE

The Tokyo Tribunal, more than its counterpart Nuremberg trials, generated extensive criticism, much of it centered on the concept of victor's justice. However, it is known as the Sister Tribunal of the Nuremberg Tribunal (Apple, winter 2014) as the Tokyo Tribunal was established reflecting the lessons learned, gaining experiences, and facing obstacles from the Nuremberg. The victor's justice means that the losing party should never raise its voices against the massacre or crimes in the future committed by the winning parties. Besides, the winners (victors) determine (seeing the pathetic condition and suffering of a loser) to terrorize other rival countries for not to raise their heads against them. Thus, the core principle of the victor's justice is to (loser must) endure whatever the winner does.

Unlike the American delegate intimidated to walk out over the court's location, the French delegate protested having to bring charges of crimes against peace, the British worried over the risk of German retaliation (countercharge), and the Soviets declined to tolerate a definition of the war of aggression (Mettraux, 2008) on the Nuremberg Tribunal, the Potsdam Declaration was signed on July 26, 1945 (afe.easia.columbia.edu/ps/japan/potsdam.pdf). US President Harry Truman, British Prime Minister Winston Churchill, Chinese President Chiang Kai-shek, and Chairman of the Soviet Union Joseph Stalin were attended in Potsdam Conference in Germany, two-month later Germany surrendered. Victors (allied leaders) signed the Declaration but, Staling denied it (www.britannica.com/topic/Potsdam-Declaration). The sole purpose of the Declaration had been to call for the unconditional surrender to Japan. The Potsdam Declaration was signed when World War II in Europe ended, but Japan's war remained continuing (Japan Institute of International Affairs, March 2014).

At a press conference, the Japanese Prime Minister Suzuki Kantarō refused to surrender at the beginning. Declaring war on Japan, the Soviet Union signed the Declaration after the USA dropped the second atomic bomb at Nagasaki (Butow, 1954). While the Japanese Government attempted to preserve the imperial institution, the victors agreed to respect the Emperor struggled for surrender (www.britannica.com/place/Japan/World-War-II-and-defeat#ref319735).

The Declaration intended to deliver all Japanese armed forces belonging to the WW II for unconditional surrender to initiate a stern action to prosecute and punish the Japanese war criminals (Potsdam, July 26, 1946) in the name of victor's justice. The USA's secret pledge had been that Emperor Hirohito could continue on the throne (The National WW II Museum, August 26, 2020). The USA authority believed that Hirohito could stabilize post-WW II Japan and legitimize the Japanese Government working with them.

The US Army General Douglas MacArthur had been appointed as a Supreme Commander for the Allied Powers (SCAP) by the special proclamation of the US President on January 19, 1946 (Kaufman, 2013) rather than (allied) victor's consent. MacArthur was seduced by self-hubris (Furbank, February 1990). Outspoken, disobedient, arrogant, and callous MacArthur had been granted authority to issue all orders for implementing the Terms of Surrender, the Occupation

and Control of Japan, and all Supplementary Directives (German Instrument of Surrender, May 8, 1945). On September 2, 1945, Japan signed the Instrument of Surrender by agreeing that war criminals would be brought to justice (MacArthur, 1994). However, MacArthur ordered to arrest of 39 Japanese political and military leaders only one-week after the establishment of the Tokyo Tribunal without preliminary investigation.

MacArthur did not only establish the Tribunal; he approved the Charter, jurisdiction, and methods of operation, prescribing the war crimes and crimes against humanity. The Japan Charter had been no less than the London Charter for the operation of the IMT at Nuremberg (www.judicialmonitor.org/archive_winter2014/spotlight.html). Besides, MacArthur laid out the composition and function judges, and appointed eleven judges, one-each from the 11-signatory (Kaufman, 2010). Except for Generals one-each from the muscled USA and the Soviet Union nations, all selected judges were academicians and professionals from the law background. The Chief Prosecutor Joseph B. Keenan was appointed by the US President Truman (www.justice.gov/criminal/history/assistant-attorneys-general/joseph-b-keenana). The IMTFE (Article 3.a) states that the Supreme Commander had been the power to appoint a Member to be President of the Tribunal (International Military Tribunal for the Far East, January 19, 1946). And Australian judge Sir William Webb was appointed as the President of the Tokyo Tribunal. The Tokyo War Crimes Trials were held two-year and six months starting from April 29, 1946, to November 12, 1948. The Tribunal established mentioning three-broad crimes category of jurisdictions: (i) Class A under crimes against peace (wagging aggressive war), (ii) Class B under conventional war crimes, and (iii) Class C under crimes against humanity (Tanaka, McCormack, & Simpson, 2010). Generally, Class A is defined as policy-makers, B as policy-supervisors, and C as policy-implementers.

Crimes against Peace is defined by the Charter, which states, "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing" (Schick, 1948; AlMadani, January 24, 2020, & Timothy, 2001). Class A crimes were pointed at the highest military and political officials who had conspiratorially planned and directed to start and wage war. Tokyo Tribunal followed similar processes to those defendants in Germany (Glazer, Undated). Initially, 28 war criminals, including 18 military officials and ten political-government top-ranking leaders, were selected for trials (Taekemae, 2002). Additional 42 Japanese indicted for industrial and financial charges for supporting WW II, but hearings were never conducted (Apple, winter 2014).

Class B crimes included those of conventional war crimes that violated the laws or customs of law. Class C crimes had defendants of those of any rank involved in murder, enslavement, deportation, and other inhumane acts committed against the civilian population, before or during the war. More than 5,700 Japanese nationals were charged with Class B and C crimes, but prisoners' abuse had been widespread for charges on crimes (Tanaka, McCormack, & Simpson, 2011).

Several controversies existed about the Tribunal. One of the crucial arguments was that the Tribunal had an American bias, unlike the Nuremberg Tribunal. There had been only a single prosecution team led by MacArthur, although the Tribunal members represented 11 different victor countries (Horowitz, November 1950). As a result, the Tribunal received less official

support than the Nuremberg Tribunal. The US assistant Attorney General had a much lower position than Nuremberg's Robert H. Jackson, a justice of the US Supreme Court (Horowitz, November 1950).

MacArthur had favored a robust military action against nonviolence, and isolationism that made him unpopular with the President Roosevelt administration (James, October 1, 1970). The US President said, "MacArthur could never see another sun, or even a moon for that matter, in the heavens, as long as he was the sun" (Perry, May 25, 2014). He was ranked among America's worst Generals in dealing with opposition (Perry, May 25, 2014). Although President Franklin D. Roosevelt promoted MacArthur to the Supreme Commander of the Southwest Pacific Forces, he stated that MacArthur had been the worst politician and had been a difficult General to manage (Sparrow, October 20, 2015). While MacArthur forces were compelled to withdraw from North Korea due to China's intervention in war, he publicly spoke against the strategy initiated by Harry S. Truman, the President of the U.S. (Schnabel, January 24, 2016).

Regarding justice, Dutch Professor Röling stated that the Allied victors were aware of the bombings and the burnings of Tokyo, Yokohama, and other cities; 'still, we saw that every day the victor allied had violated them extremely' (Schouten, 2014). Once an American defense counsel for Japanese defendants argued that the surprise bombing of Pearl Harbor in Hawaii had been murdered (Remembering Pearl Harbor, December 7, 2001). But, the Tribunal did not speak a word against the indiscriminate bombings in Chinese cities by the Japanese Imperial Forces (The Japanese Times, March 31, 2006). Those soldiers gathered 1,300 Chinese forces and civilians at Taipai Gate and blew them up by landmines. Also, the Japanese troops tied the hands of 57,000 prisoners of war, divided them into four columns and were shot (http://www.kevinpezzi.com/blog/Hirohito_war_criminal.php).

The Tribunal never raised questions on atrocities done in China in fear of the USA. It neither accused of atomic bombings at Hiroshima, Nagasaki, and other Japanese cities (Sellars, March 2013), which were war crimes even under the 1907 The Hague Convention (Streifer, 2017). As a result, the Japanese pilots and officials were prosecuted for their aerial bombings neither at Pearl Harbor nor in cities in China and other Asian countries (Primoratz, June 23, 2010). It was evident that the Japanese troops had been terrorizing there under the active leadership of the 124th Japanese Emperor Hirohito.

Japanese former Prime Minister Prince Fumimaro Konoe (Hirohito's brother) stated that Hirohito was a major war criminal, but MacArthur did not prosecute him (Dower, June 2000). Why had Hirohito been that much favored by MacArthur? There were several answers. In 1945, the US discovered that the Japanese had hidden large quantities of gold bullion and other pearls in Manila, the Philippines. President Truman ordered to secretly loot all of them and decided to mobilize those riches as action fund to fight against global communism by bribing political and military leaders and manipulating elections in foreign countries for more than fifty years (Seagrave & Seagrave, 2003).

When MacArthur arrived in Japan and met with shogun Hirohito, Hirohito asked him how much booty he had collected from the conquered countries. Hirohito put forward the concept of a project named Golden Lily (Gold Warriors) or America's secret recovery of Yamashita treasure (Seagrave & Seagrave, 2003). The Golden Lily had been used by Emperor Hirohito to bribe

MacArthur, where he later lived a life of luxury after his retirement against meagre US Army salary. Moreover, the Golden Lily worked in close cooperation with the new premier, Yamato named Prince Higashi-Kuni a Class A category perpetrator.

Among 39 A category perpetrators, MacArthur arrested Hideko Tojo, the Prime Minister, at the opening of WW II. Additional suspects were the PM and Imperial Family member Fumimaro Konoe, a senior politician and Emperor's staff Koichi Kido and Nasimotonomiya Morimasa-ou, the Marshal of the Army and among others (Yokoshima, Undated). Tojo was sentenced to death by hanging on December 23, 1948, while he did not follow the Imperial Rescript on waging the war of aggression (MacArthur and Tsushima, 1964). The PM Konoe might have been killed in the name of suicide as he strongly criticized Hirohito as the supreme leader of war crimes (Yenne, September 23, 2014). While Konoe made various unsuccessful attempts to end the war with China, he was ousted from the Cabinet (Hayashi, October 8, 2020).

The Soviet Union sentenced 12 Japanese developers of a bacteriological weapon at a forced labor camp between 2 to 25 years through the Military Tribunal. While those bacteriologists exchanged their valuable method, data and information on bacteriological warfare to have experiments on humans to the Soviet scientists, all of them returned to Japan by 1956 (Polunina, December 12, 2014). All bacteriology developers were granted immunity by the war victor when the global trend of prosecuting wartime defendants was largely over (Cunliffe, November 2006).

Indian Justice Radhabinod Pal argued that the Tribunal failed to provide anything other than the victors' opportunity to retaliate against the losers. Pal criticized that conquerors should not have the right to judge the conquered. The judges' treatment for the bombings in Nagasaki and Hiroshima with nuclear weapons had been grave violence on the US, making it comparable to Nazi war crimes (Uibu, February 20, 2020). It had been an exclusion of Western colonialism and the atomic bombings at Hiroshima and Nagasaki from the list of crimes (Brook, August 2001). Because of the USA's biased and vested political interest, the Tribunal had worked no more than the acceptance of perpetrators or worked on behalf of victor's justice (Tanaka, McCormack & Simpson, 2010). Pal submitted a total of 1,235 pages length of dissenting opinions. He noted that the Tribunal was merely an instrument of political power (www.sdh-fact.com/review-article/792/). And he savaged the Tribunal as sham employment of legal process to please the Allied thirst for revenge (www8.austlii.edu.au/nz/journals/NZYbkIntLaw/2008/23.html).

Justice Pal partially withdrew from the Tribunal in September 1947 for family reasons. President Webb told General MacArthur that Pal needs to go home to India because of his wife's illness (Webb, September 30, 1947). However, he never joined the Tokyo Tribunal because of his dissenting opinions on the process of investigation, prosecution, and punishment to the accused. His absence had reflected the contradiction of victor's justice. Pal said, "I would hold that every one of the accused must be found not guilty of every one of the charges in the accusation and should be acquitted on all those charges" (Baird, May 13, 2015).

A strong friendship had blossomed between Justices Pal and Bert Röling. Both were the most vocal critics of the Tribunal dissenting with the objectives and functions of the Tribunal. Both also had a good connection with Judge Henri Bernard. Bernard and Röling tried to work with

other judges, but other judges vain to accept differences of opinions (Sedgwick, July 2012). Judge Erima Harvey Northcroft had placed the dissenting views of Pal, Röling, and Bernard together in his personal collection of trial materials (Sedgwick, March 22, 2018). Having the dissent opinions of Justice Henri Bernard, Richard H. Minear says, "A verdict reached by a tribunal after a defective procedure cannot be a valid one." Given what we know about the Tokyo trial, is it any wonder that some question its validity? If the purpose of the Tokyo trial was justice, then why were there no safeguards to protect the accused?" (1971). Justice Delfin Jaranilla¹ also put forward separate concurring opinions, stating the Tribunal as being too lenient. Five of the 11 Judges, including the President of the Tribunal, Webb submitted opinions on the Judgment separate from the majority (<https://www.canterbury.ac.nz/library/search-our-collections/archives-collection/war-crimes/opinions/>). It is to be remarkable that the judges who had worked favoring with victor's justice have been forgotten. Still, judges who had worked in favor of loser's or victim's justice have been remembered in all times here and there. On November 26, 1946, MacArthur confirmed no need for the Emperor's resignation (Dower, June 2000) and escaped the imperial family from being accused. However, the Tribunal gathered the testimonies of the defendants as not to implicate the Emperor and his associates. Hirohito's close officials worked with the Tribunal in compiling the lists of suspects' potential war criminals. The suspects were arrested as Class A and confined in the prisons of Europe (Sugamo Prison), who seriously vowed to defend their Japan's sovereignty against any possible flaw of war accountability (Dower, June 2000).

In 2015, Nikolai Nevsky stated that the Tribunal had been more of a political nature than a legal body. And, the charges were already prepared before the trials (Uibu, February 20, 2020). MacArthur ordered to arrest some 100 officials relying on the lists of suspects the US War Department had prepared. And those names of arrests were all suspected war criminals based on account of crimes against peace (Totani, 2010). The US Department of State says, "Whether or not the same individuals also committed war crimes or crimes against humanity did not concern the US War Department or MacArthur, at least in their preparation for the Tokyo Trial" (1945).

Instead of following and accepting the mandate of the International Prosecution Section of the Tokyo Tribunal, MacArthur separately ordered many other suspected individuals to arrest for violating rules and customs of the war of Americans and other Allied victors. He had investigated the suspects at the US military Commissions in many other places such as Shanghai, Manila, and Yokohama under his direct command and control. Some suspects were also transferred to other war crimes courts (Piccigallo, 1980). Only when evidence directed to the suspects' involvement in aggressive war, such cases were transformed into the Tribunal. President Truman desired to pursue Axis leaders under crimes against peace (Totani, 2010).

Starting from the beginning, Attorneys from all 11 Allied victors investigated the accused where MacArthur left off (Horwitz & Winslow, May 18, 2013). Several members of the Tojo War Cabinet were named to represent the stage related to the war against the US. Two-thirds of the counts (36 out of 55) of the suspects focused on crimes against peace to make Tokyo Tribunal as a central of prosecution (Pritchard, 2008). Crimes against peace were retrospective actions in which no war could be considered a crime under the existing body of international law (Kenzo, 1948). The Tribunal rejected the prosecution controversy as a precedent stating

Nuremberg Tribunal had already resolved all the legal contentions and crimes against peace (International Military Tribunal for the Far East, 2002).

Most of the time, the judges were divided, majority vs. minority (concurring vs. dissenting opinions). American Joseph Keenan, MacArthur appointed Chief Prosecutor of the International Prosecution Section, did not happy having the significance of war crimes prosecution and punishment. His primary job had to press charges of crimes against peace, not for other categories of offenses (Totani, 2010). His proposal made other allied victors (prosecutors) unhappy. The prosecution initially developed 19 counts following three categories: (1) murder; (2) conspiracy to commit war crimes and crimes against humanity, and (3) war crimes and crimes against humanity. But, the Tokyo Tribunal dismissed 1st and 2nd categories showing on technical grounds except the third - war crimes and crimes against humanity category (Totani, 2010).

The Tokyo Tribunal faced tremendous challenges on prosecution in obtaining evidence and testimonies of criminal orders as the entire documents were destroyed on the order of the Japanese War Ministry prior to the formation of the Tribunal. On August 14, 1945, War Ministry dispatched a telegram to the Japanese Armed Forces that reads, "The confidential documents held by every troop should be destroyed by fire immediately" (Pritchard, 2008). Emperor Hirohito instructed the War Ministry to destroy evidence materials and telegram machines as soon as possible.

Infamously, the US State War Navy Coordinating Committee (SWNCC) interfered with excluding the Japanese Emperor Hirohito, stating political reasons. The Tokyo Tribunal had been sanctioned by the Washington-based Allied control Far Eastern Commission (Boister, 2014). The New Zealand prosecutor R.H. Quilliam and French Judge Henri Bernard denounced Hirohito's de facto immunity (Sedgwick, July 2012). Emperor Hirohito has been the most controversial imperial person in the entire history of the victor's justice. Smith Dayle comments, "During the period covered by the indictment, there had been 21 premiers, 30 foreign ministers, 28 home ministers, 19 war ministers, 15 navy ministers, 23 finance ministers, and 15 separate cabinets; but only one Emperor" (2003). Many demanded Hirohito's impeachment on crimes (Piccigallo, 1980). More importantly, the Tribunal did not indict Emperor Hirohito, but Japan fought the war in his name (Futamura, July 19, 2011).

Hirohito was labeled the number one war criminal and raised the issue in the United Nations War Crimes Commission (UNWCC) in January 1946 (Boister & Cryer, 2008). Only the US and British pressure UNWCC not to include the name of Hirohito on the list of suspects, but Australia submitted a list to the prosecution calling for Hirohito's indictment (Boister & Cryer, 2008). New Zealand Judge Erima Northcroft noted that the nations who constituted the Tribunal would have made reasonable criticism that such trials were acts of retaliation or retribution committed by victorious nations upon the defeated (Boister & Cryer, 2008). New Zealand, Brigadier Quilliam said, "It has always been obvious that, excepting for the fact that it was important from the point of view of policy that the Emperor should not be made a defendant, he should have been prosecuted" (File No. 106/3/22, October 31, 1947). The US directed SCAP not to have any charge to Hirohito (Brackman, 1987; Inoue, 1991).

The US Supreme Court stated that the SCAP had been a principal agent of the Allied victors and the Tribunal. William O. Douglas, Supreme Court Justice, dissented stating that the Tokyo Tribunal had neither been free nor independent from the US controlling mechanism (US Supreme Court, 1948). President Webb of the Tokyo Tribunal actively resisted the SCAP's attempt to direct the Tribunal (www.legal-tools.org/go-to-database/ltfolder/0_28747/), but he failed.

In regards to the criminal responsibility of Hirohito, President Webb declared, "No ruler can commit the crime of launching aggressive war and then validly claim to be excused for doing so because his life would otherwise have been in danger ... It will remain that the men who advised the commission of a crime, if it be one, are in no worse position than the man who directs the crime be committed" (Röling & Rüter, 1977). Justice Henri Bernard of France determined that though Japan's declaration of war had a principal actor Hirohito, he was escaped from all prosecutions of the past crimes (Röling & Rüter, 1977).

When US Brigadier General Bonner Fellers landed in Japan, he directly visited Hirohito to work for his protection and was allowed the major suspected criminals to coordinate their stories that the Emperor would be freed from indictment (Bix, 2000). Before Japan's surrender, there had been a clandestine understanding that Hirohito would have been scot-free for war crimes and crimes against humanity, similar to many others (victors) leading government figures (Dower, June 2000) in the world. Thus, Hirohito retained his position on the throne, *albeit* with diminished status. Even though, Hirohito frequently appeared as the Supreme Commander of the Japanese armed forces with military uniform (Krauth, 2001) before the surrender in 1945.

Owing to the USA's controlling roles over the Tribunal, it provided the Chief Prosecutor, staff, and necessary funds for running the Tribunal. It bears telling here that there has been a historical impression that the USA never pursues free, fair, and impartial relationships (Horowitz, May 18, 2013). The Tribunal found many perpetrators guilty and sentenced them to punish, ranging from death to seven years' imprisonment. In Japan, several additional trials took place in cities outside Tokyo. A few allies such as Australia, Canada, India, and the Netherlands were willing to make some reductions in sentences (Wilson et al., 2017), but in vain to implement their voices in front of MacArthur.

Hirohito continued as an Emperor while the victor US believed that he could only fight against communism. He had been accountable for the endless war and a series of war crimes. Japanese slaughtered 30 million civilians, including children and women, who were raped before being murdered. Imperial Japanese soldiers inhumanly raped even girl children, in addition to elderly women (www.kevinpezzi.com/blog/Hirohito-war-criminal.php). Imperial Japanese troops terrorized Chinese commoners with brutal atrocities. Those victims such as infants, children, and women were killed immediately after being raped; many victims were mutilated by penetrating vaginas with bayonets, bamboo sticks, and other objects (Clancey, undated; Gray, February 1996 & Dragon Daily, February 7, 1938).

The US President Gerald Ford invited and warmly welcomed Emperor Hirohito on the red carpet, and the White House organized a State Dinner for him on October 2, 1975. The Tribunal satisfied the Supreme Emperor Hirohito and his associates. Since the days of Hirohito as being

a satellite anti-communist close-friend, Japan has been trailing the United States till date. As a result, Japan has been participating in almost all inhumane war crimes and crimes against humanity being initiated by the USA in the name of terrorist or terrorist acts.

There had colorful Judges in the Tribunal. President Webb had no less than a mercurial role-here and there, whereas judge Erima H. Northcroft as a serious, Pal as a dissident, Röling as a passionate, Bernard as a more detached, Lord Patrick as a reserved, E. Stuart MacDougall as an unassuming, Mei Ju-ao as an astute, Myron C. Cramer as an underrated and judicious, Jaranilla as a severe justice, I. M. Zaryanov as an ebullient-rigorous and John P. Higgins as a transitory (Sedgwick, March 22, 2018).

The prosecution focused on the evidence on three things of war crimes, which had widespread; the accused knew that forces were committing atrocities and the accused had an authority to stop the crimes. The prosecution presented the argument of a conspiracy that had begun in 1927 and continued till the end of WW II in 1945 (Dower, 1986). The prosecutor who presented the letters allegedly written by Japanese citizens as evidence that had admitted without proof of authenticity and no cross-examination had been there for the defense (Minear, 1971). The defense claimed that the Tribunal could not be free from substantial suspicion regarding its fairness, legality, and impartiality. It is to be noted that crimes against peace could not define the crimes as an international humanitarian law in which victors used violation of laws that had not existed when the crimes had been committed.

Finally, Hirohito, Active Head of the State, had been one of the most heinous war criminals in history whose brutality is expected never to be excused. History will recall Hirohito's war of aggression, war crimes, and crimes against humanity forever till the existence of human beings in the world.

CONCLUSION

The US, in practice, never favored conflict transformation by peaceful means and informal-formal indirect (mediation and facilitation) and informal-formal direct (official) dialogue as it achieves one of the largest incomes through selling the weapons, trading war-related instruments, and earning money through copyrights jurisdiction (Pathak, September 21, 2020). The atomic bombings of Hiroshima and Nagasaki have been considered the most heinous, violent, bullying, and bloodthirsty war of aggression in human civilization in world history. Those brutal bombings were out of the norms and principles of humanitarian law, laws of armed conflict, and the Hague and the Geneva Conventions.

The Tokyo Tribunal had been defeated by the mercy of the victor. The Tribunal had principally been a product of the USA to threaten and terrorize the opponent for never going against their wish. As a corollary, Japan is still behind the USA, carrying over the superiority complex politics initiated by long back Hirohito.

The Japanese suspects who surrendered with the US were never brought to trial. And MacArthur gave immunity all of them, including Emperor and his preferred family and a few others. To influence the Tribunal, Hirohito himself declared a ceremonial Emperor. Still, he directed a few Generals to continue fighting with the so-called enemies on the grand design of

the victor United States. He made them scapegoats as the real perpetrators even after Japan's announced its surrender with allied victors.

The apparent conflict provided the impression that the Tokyo Tribunal had been no more than a way for the privilege of victor's justice. The Tribunal did not even discuss the massacre in Hiroshima and Nagasaki. What could be a greater proof of the victor's (in)justice than this against the loser's (victim's) justice?

The Tokyo Tribunal had no less a pseudo body that had been highly influenced by the US military doctrine, revenge politics, and retributive justice. Retributive justice is an ancient method of proportional justification for punishment. Retributive justice is the same punishment in return to the perpetrator for their past inhumane actions. For example, a perpetrator gets the death penalty for having committed murder or killing in the past. The decisions of the Tribunal were one-sided, inefficient, and ineffectiveness as pay one in his own coin. Thus, the Tribunal has been a tu queque in its function (Pathak, September 21, 2020).

It had formed just to show the entire world that allied victors conducted the Transitional Justice process to investigate, prosecute, and punish the perpetrators and to make them accountable (Pathak, 2019). No truth for justice was granted to the real victims or survivors.

The Tribunal was used as a platform to prove victor's justice through their own power, politics, property, and privileges, further weakening the poor and vulnerable victims, communities, and nation as a whole. In fact, the victors were accountable for political assault, physical injury, material damages, mental or emotional impairment, socio-cultural trauma, and economic loss. Furthermore, the victors conspiratorially suppressed the pains, sufferings, and grievances of the victim's voices, forcefully snatching and destroying the evidence what the victims had. As such, the victors applied the threatocracy and crowdocracy against the poor victims and defeated the nation to discourage them further.

The Tribunal officials who prioritized cronyism were instructed to deliver one-sided judgment based on victor's desires. The double-standard, hypocrisy, and threatocracy prioritized retribution to Hirohito's opponent Japanese soldiers, politicians, and bureaucrats-technocrats. Neither there would have been any trust of people and victims in the Tokyo Tribunal, nor had they performed their tasks properly as an autonomous justice body for the victims (Pathak, 2020). Thus, the Tokyo Tribunal had virtually been victor's justice with self-righteous fraud and lynching bodies. Most grave crimes committed went unpunished. Therefore, justice delivery appeared as a sword in a judge's toupee. Justice becomes elusive for the innocent, weak, and poor victims. Overall, the victor's justice has been against the International Public Law, International Human Rights Law, International Humanitarian Law, and International Criminal Law in the transitional justice system.

Transitional justice has remained as the two political and legal sides of the same coin. Examining the entire history of transitional justice reveals that when politics applies more, the Tribunals or Commissions lead to victor's justice. If the legal side is prioritized, the victim's justice is always there. However, the former (victor's justice) is applied predominantly around the world.

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Endnotes

ⁱ Jaranilla had been appointed as a judge at the Tribunal who had been captured by the Japanese soldiers and had been on the Bataan Death March.