An embarrassing necessity: the Tokyo trial of Japanese leaders, 1946–48

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In the middle of August 1945 Emperor Hirohito of Japan made an unprecedented radio broadcast to the Japanese people in which he informed his subjects that they must accept that Japan had experienced final defeat in the huge wars that had ravaged Eastern Asia and the Pacific. The dropping of the two atomic bombs on the cities of Hiroshima and Nagasaki, together with the decision of the Soviet Union to join the war against Japan, acted as the catalyst compelling surrender.¹ The role of Emperor Hirohito in the events preceding and following the outbreak of the Pacific war was to be the source of much argument and speculation, fuelled by the decision of the victorious Allies that the Emperor would not be prosecuted or permitted to give evidence in the Tokyo trial of political, military, and naval leaders between 1946 and 1948.² The end of the war ushered in the establishment of the Allied occupation, which continued until sovereignty was restored to Japan in April 1952, following ratification of the peace treaty concluded in San Francisco in September 1951.³ However, in essence, the occupation was administered and controlled by the United States. President Harry S. Truman ultimately possessed more power to determine the fate of Japan than the other Allied leaders.⁴ Truman was not deeply interested in Japan, however, and delegated decision-making to others. The most prominent of these was the man appointed by Truman to head the Allied occupation, General Douglas MacArthur.⁵

John Dower has produced an important, challenging reassessment of the occupation in which he has emphasised the impact of interaction on both occupiers and occupied. Each was affected deeply by the course of events, sometimes in a crude manner but often in very subtle ways. Dower sees the occupation as committed originally to fundamental reform yet increasingly focused on gaining the co-operation of the Japanese people.⁶ MacArthur was 65 years of age when the occupation began. He was highly experienced and had served as a key commander in the Pacific theatre. In American politics MacArthur supported the Republican Party: he was critical of Roosevelt and

Truman. In Japan he acquired a strong sense of mission. He was determined to reform Japanese institutions fundamentally with the purpose of eradicating extreme nationalism and militarism and of ensuring that when Japan regained sovereignty, it would function as a democracy willing to accept American leadership.⁷ MacArthur was responsible for setting up the International Military Tribunal for the Far East (IMTFE) and for considering appeals against the judgement of the tribunal.

The magnitude and scale of the atrocities committed in the Second World War rendered it urgent to decide, in 1945, how German and Japanese leaders should be punished. Some of the principal members of the Churchill coalition government preferred summary execution. This was the preferred solution of Winston Churchill and Anthony Eden, the Prime Minister and Foreign Secretary, and, interestingly, of the chief law officers of the Crown, the Lord Chancellor, Viscount Simon, and the Attorney General, Sir Donald Somervell.⁸ The Truman administration believed that it was necessary to establish formal tribunals comprising judges, appointed from the victorious states, with the broad character of courts functioning in a domestic context. The British government was wary of creating an over-complex structure which could become cumbersome and time-consuming. Patrick Dean of the Foreign Office commented in November 1945 that caution should be shown in response to the American proposal to establish the IMTFE.⁹ In the next few weeks, however, British opinion moved towards acceptance of the American proposal for creating international courts on which Britain and other relevant countries would be represented. Time was the chief cause for concern.¹⁰ It was feared in London that the Truman administration might embark on an excessively ambitious series of trials which could entail the expenditure of much time and energy.¹¹

The Truman administration decided to establish a large tribunal representing those states mainly responsible for fighting Japan between 1941 and 1945. At the beginning of 1946, it was unclear whether the jurisdiction of the tribunal would be restricted to charges of 'planning, preparation, initiation or waging of a war of aggressions, etc.' or whether crimes against the laws and customs of war and against humanity would also be pursued. It was decided to combine general and specific charges, the most important being Count 1, responsibility for advancing a broad conspiracy to secure Japanese domination of Asia and the Pacific by force. Evidence relating to the charge of crimes against peace was to be collected by the deputy British prosecutor who would assist in the preparation of the prosecution in Tokyo.¹² The chief prosecutor was an American, Joseph Keenan, who had liaised with the American Congress regarding New Deal legislation implemented by the Roosevelt administration and had then held office as assistant Attorney General in the criminal division in the Justice Department. This turned out to be a most unsatisfactory appointment. Keenan lacked the knowledge of international law and did not possess the ability or industry required in preparing a highly complex prosecution.

Instead, the bulk of the detailed preparation of the prosecution case was fulfilled by other lawyers, notably by Arthur Comyns Carr, Keenan's British deputy. The British Attorney General persuaded Comyns Carr to accept the appointment on the basis that the trial would be short and might be completed by May 1946 (the end came eventually in November 1948). An official in the Foreign Office commented that Sir Hartley Shawcross had given the assurance on timing in 'an over-sanguine moment'.¹³ Comyns Carr was a prominent KC who had served briefly as a Liberal MP in 1923–4: he remained active in the Liberal Party, standing again for Parliament on several occasions and serving as the national president of the party in 1958–9. After returning from Tokyo Comyns Carr would serve as vice-treasurer and treasurer of Gray's Inn. In 1946, however, he was faced with the daunting task of assimilating large quantities of material rapidly and of undertaking much of the responsibility that should have been shouldered by Keenan. According to Roy Douglas, in a brief biographical assessment, Comyns Carr did not recover fully from the descriptions of the shocking atrocities he investigated.¹⁴ It is not surprising that he complained not infrequently of the burdens he carried and protested at delays in sending him documentation. It was to the credit of Comyns Carr that the prosecution was as solidly prepared as it was, and that he performed ably in court. The disasters in the prosecution were usually associated with Keenan's under-prepared contributions. On the whole, the prosecution team worked hard and included several able American lawyers who were markedly better than their chief.

In total eleven countries were represented among the judges – Australia, Canada, China, France, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, the United Kingdom, and the United States. The Truman administration was originally unwilling to include India but eventually agreed that an Indian judge should be nominated (India was part of the British empire in 1946 and became an independent state in 1947).¹⁵ One of the obvious problems, and subsequently a cause of fundamental criticism, was the composition of the IMTFE: all of the judges came from countries hostile to Japan (admittedly, it was more complicated in the case of India where some Indians had fought against Britain in association with Japan but far more Indians fought against Japan). This gave rise to the accusation of 'Victors' Justice', a charge consolidated in Richard Minear's influential short study, published in 1971.¹⁶ It is interesting to observe that Keenan, despite his numerous faults, did suggest, in January–February 1946, that Japan should be involved in the trial. He indicated that this could be accomplished either by including the Japanese government in the indictment among the countries submitting the charges, or by appointing a Japanese judge and a Japanese prosecutor. The British liaison mission in Tokyo reported in February 1946 that some Japanese were keen to assist in the prosecution, and that crimes committed against the Japanese people, such as the numerous assassinations of political figures in the 1930s, could be included in the charges. As Oscar Morland pointed out in a telegram

from Tokyo, participation of Japanese citizens would modify the criticism of 'Victors' Justice'; however, Allied public opinion might not take kindly to such a development.¹⁷

L. H. Foulds of the Foreign Office observed that it was not desirable that Japanese should serve as judges or assistant prosecutors.¹⁸ A telegram was sent to the British mission stating that Japan should not participate as Keenan had suggested: it would raise the issue as to why such a step had not been taken in the case of Germany, and public opinion in Allied states would resent such a course of action because of the atrocities committed by the Japanese armed forces.¹⁹ B. V. A. Röling, the distinguished Dutch judge whose dissenting views and constructive retrospective criticisms will be considered later in this chapter, believed that Japanese should have taken part, as Keenan had proposed, and that a neutral judge (or judges) should have been appointed from countries not involved as belligerents in the Pacific war.²⁰ Röling envisaged that Japanese and neutral judges would have constituted a minority of the judges.

The judges appointed to serve in Tokyo were, in the main, safe and rather staid figures: the chief exceptions were Röling and the Indian judge, R. B. Pal. The American judge appointed originally, John P. Higgins, resigned shortly after the commencement of the trial and was replaced by Myron Cramer, who specialised in American military law. The British judge, Lord Patrick, came from the Court of Session in Edinburgh. Like Comyns Carr, Patrick had accepted the appointment on the understanding that the trial would not be protracted. He chafed at its length, and his Scottish colleagues complained of the pressure of business facing them during his absence in Tokyo. Patrick suffered from ill health and this contributed to his decision to decline MacArthur's offer of appointment as acting president (chairman) of the IMTFE when the president, Sir William Webb, was away temporarily in Australia. The head of the British mission in Tokyo, Alvary Gascoigne, and the Foreign Office were annoyed that Patrick refused MacArthur's offer without prior consultation.²¹ MacArthur's appointment of the Australian, Webb, softened the image of American dominance of the deliberations. However, Webb's appointment was regrettable in several ways. The principal legal objection was that Webb had already been involved in investigating alleged Japanese war crimes, including cannibalism, in New Guinea on behalf of the Australian government. Surely this alone should have disqualified Webb from serving. As regards the daily functioning of the court, Webb lacked the diplomatic skill and urbanity required in a chairman, those qualities demonstrated so successfully by Webb's equivalent at Nuremberg, the British judge, Sir Geoffrey Lawrence.²² Webb was a somewhat remote figure and did not enjoy good relations with his fellow judges.²³

The Canadian judge, E. Stuart McDougall, was sound, and Harvey Northcroft, the New Zealand judge, was capable. The latter would indeed have been a more suitable appointment than Webb, but MacArthur held that New Zealand was too insignificant a country and could not provide the president of

the Tribunal, when the question arose of replacing Webb during the latter's absence in Australia.²⁴ The French judge, Henri Bernard, did not contribute particularly but did dissent in part at the end of the trial. The Dutch judge, Röling, was the youngest and probably the ablest of the judges. He was 39 years of age when appointed and had specialised in the laws of the Netherlands East Indies (Indonesia). Röling was strongly committed to the trial of war criminals and to holding leaders responsible for the crimes carried out by their subordinates. At the same time, he was very critical of various aspects of the conduct of the trial.²⁵ The Soviet judge, I. M. Zaryanov, was a specialist in Soviet military law and spoke neither English nor Japanese, the two official languages of the trial. The Chinese judge, Mei Ju-no, was relatively young, possessed a law degree but had never practised. The judge from the Philippines, Delfin Jaranilla, had been a prisoner-of-war of the Japanese and was a survivor of the notorious Bataan death march in 1942. To an even greater extent than Webb, Jaranilla could not be seen as possessing the detachment required to sit as a judge. Pal was appointed by the British authorities in New Delhi when the Truman administration reluctantly permitted the appointment of an Indian judge. He was conversant with international law and was a former judge of the Calcutta High Court. He was also sympathetic to the accused because he regarded Japan as in part responsible for liberating Asia from occidental imperialism.²⁶

Preparations for the Tokyo trial were influenced significantly by preceding arrangements for the analogous trial of Nazi leaders in Nuremberg. The charter for the IMTFE was very similar to the charter compiled at the London conference in the summer of 1945, which paved the way for the Nuremberg trial. However, as Röling later observed, major differences existed in the character of the trials of German and Japanese leaders. The most basic was that those prosecuted at Nuremberg had committed or ordered others to commit the acts of which they were accused. In the Tokyo trial it was much more difficult to identify orders to commit particular crimes.²⁷ The IMTFE was established in a proclamation issued by MacArthur on 19 January 1946.²⁸ The charter, defining the authority and powers of the Tribunal, was issued on 26 April 1946. Features worthy of particular note are that six out of the eleven judges constituted a quorum (Article 4(a)); decisions and judgements were arrived at by the majority vote of those present (Article 4(b)); if a judge had been absent, he could resume attendance without difficulty unless he stated in court that he could not continue because of inadequate knowledge (Article 4(c)). Article 5 defined jurisdiction over persona and offences. Acts defined as crimes falling within the terms of reference of the Tribunal comprised crimes against peace, conventional war crimes, and crimes against humanity. The Tribunal could impose the death penalty: the Supreme Commander for the Allied Powers (MacArthur) was responsible for determining appeals.²⁹

The trial lasted far longer than anticipated, but this should have occasioned little surprise. The issues addressed at Tokyo were more sweeping and,

to some extent, more vague than at Nuremberg. The geographical areas concerned were immense, ranging from the borders of India to New Guinea and from Manchuria to obscure Pacific islands. The difficulties of securing accurate, agreed translations from Japanese into English were considerable. The daily conduct of the trial was often delayed by challenges to translations or by corrections supplied by translators. Much evidence had been destroyed by the Japanese in the closing stages of the war or immediately after surrender. Some material was of an ambiguous nature. In retrospect, it is amazing that the British Attorney General and officials responsible for dealing with war crimes in the Foreign Office could ever have believed that the trial could be completed rapidly. MacArthur was frustrated at the protracted proceedings. According to Röling: 'the general told me explicitly that he had not wanted the Tokyo trial as it was now conceived. He had been in favor of a short court-martial concerning Pearl Harbor, a treacherous attack in an undeclared war.'³⁰ As early as November 1946, F. F. Garner of the Foreign Office noted accelerating weariness with war crimes trials: 'At a recent meeting, the cabinet expressed the strong wish that we should advocate a policy of discontinuing war crimes trials and I am sure that they would not favour our participation in any further trials of Japanese major or "sub major" war criminals.'³¹ Towards the end of the following month, Gascoigne reported from Tokyo that Truman and MacArthur were both embarrassed at the slow advancement of the trial. MacArthur told Gascoigne that the IMTFE would defeat itself by occupying so much time. Interest in the trial in the United States was waning.³²

Progress was bound to be slow for the reasons indicated earlier. Matters were exacerbated by sharp differences of opinion among the judges. Again, with a total of eleven judges from different countries, some disagreement was to be expected. Webb's cavalier behaviour and lack of diplomacy accounted for much of the difficulty. The stifling heat of the summer in Tokyo could lead to frayed tempers. Christmas Humphreys, KC, who assisted Comyns Carr in the early stages in Tokyo, wrote in a private letter in July 1946: 'The judges are fighting among themselves and have now struck work altogether at the heat in Court and the whole Trial is dragging along at a slower tempo than even I, always the pessimistic prophet, thought possible. In the Legations we play tennis at 85 and just drip placidly.'³³ The reference to the judges having gone on strike alluded to the breakdown of air conditioning. Relations between Webb and his fellow judges were at their worst in the first few months of 1947. Patrick told Gascoigne in October 1947 that the position had been so serious six months before that the New Zealand judge, Northcroft, had notified his government. The Prime Minister of New Zealand, Peter Fraser, raised the subject personally with the Australian Prime Minister, Ben Chifley, and urged that Webb should be recalled. It appeared that Fraser had received representations about Webb's conduct from another source, in addition to Northcroft. Patrick thought that Webb might be withdrawn by his government: since it would be too late to send another Australian, Northcroft would

probably assume the chair as the next most senior judge. In fact, Webb returned to Australia for only a short period and then went back to Tokyo to resume the presidency. Patrick also remarked on the fact that Pal, who had arrived late, had gone back to India and might not return.³⁴

Some of the most mordant comments on the atmosphere of the trial were provided by Comyns Carr in letters to the British Attorney General, Shawcross, which were communicated to the Foreign Office. Carr wrote on 6 October 1947 that Keenan had at first behaved better upon returning from a visit to the United States but that he had then displayed ‘the cloven hoof’. Keenan was trying to change arrangements so that he could prosecute Kido Koichi instead of Comyns Carr doing so. The reason was that Keenan was involved in a dispute with Webb over the Emperor’s responsibility, and Keenan wished to outmanoeuvre Webb. Carr criticised both: each had made unwise comments and could be relied upon to make further such comments, both being indiscreet. Keenan was making other changes in the allocation of work that would diminish the effectiveness of the prosecution. Keenan also wished to organise another major trial of Japanese leaders, presumably on an all-American basis. Comyns Carr added, ‘anyway, don’t ask me to take part in it’.³⁵ Keenan appeared to be abstaining from alcohol, after earning a reputation for heavy drinking. Comyns Carr wrote to Shawcross: ‘Do you still want me to stick this one to the end? I may be able to be of use behind the scenes in keeping it more or less on the rails. . .’³⁶ Matters clearly deteriorated for, on 21 October Comyns Carr noted that developments had been more disastrous than he had expected. Keenan was utterly hopeless, and his staff was inefficient. Carr added: ‘When you agreed that the Nuremberg system should be replaced by having one “Chief of Counsel”, I supposed you had no idea of the kind of man under whose heel I was to be placed. If I had known I would never have come’.³⁷

The climax to court proceedings occurred at the end of December 1947 and beginning of 1948 when General Tojo Hideki, Prime Minister from 1941 to 1944, gave evidence. This was the most important phase so far, since Tojo had been central to key decisions within the War Ministry and the Cabinet which had culminated in the Japanese attacks on Malaya and Pearl Harbor. The transcript of the IMTFE makes fascinating reading for the respective contributions of Keenan, Tojo, and Webb.³⁸ Contrary to what had been agreed beforehand, Keenan decided to conduct the cross-examination of Tojo himself. In his affidavit Tojo emphasised his determination, upon becoming war minister in 1940, to achieve improved co-ordination between the armed forces and the government; to maintain firm discipline in the army so as to control factionalism; and to make every effort to resolve the undeclared war against China, which had begun in July 1937 and was known as the ‘China incident’. Tojo commented on his meetings with the Emperor. Hirohito had expressed a strong desire for peace, while accepting preparations for war. Occasionally the Emperor had expressed his own opinions but these had been uttered following

prior consultation with the Lord Keeper of the Privy Seal – the Emperor had followed the recommendations of his advisers.³⁹ Pressure was put on Tojo by Keenan, outside the courtroom, to modify his evidence, since he had implicated the Emperor too directly in the approval of decisions leading to war: Tojo did so. The cross-examination is interesting not only for the duel between Keenan and Tojo but also for the sparring between Keenan and Webb. At one point Keenan, probably aware that the cross-examination was not going satisfactorily, asked if an associate, John W. Fihelly, could assist him in conducting the next phase. There was no objection from the defence but the court denied the request, and Keenan had to continue.⁴⁰ Keenan asked Tojo if his statement was envisaged as an extension of imperialistic, militaristic propaganda. The defence objected, and Webb overruled the question. Keenan then inquired if Tojo would agree that aggressive war was a crime. The defence again objected on the grounds that this was a matter for the Tribunal to decide. Webb agreed and remarked, 'But I can assure counsel that we are getting no help from this type of cross-examination'.⁴¹ A brief argument between Keenan and Webb ensued.

Comyns Carr wrote to Shawcross on 2 January 1948 that matters had gone from bad to worse. Keenan had proved disastrous in confronting Tojo: in the words of one of the employees of the British mission, 'Tojo had a good morning hanging Keenan'.⁴² Carr added that Tojo's evidence was revealing in more ways than one:

Tojo's evidence is really a plea of guilty but a very fine performance, accepting responsibility for everything and seeking to justify it. Incidentally the defendants if they have done nothing else, have proved the guilt of the Emperor pretty conclusively, which, in view of the decision not to prosecute him, we had been trying to keep in the background, and K[eenan] has been going out of his way, quite unsuccessfully to disprove. Of course, they have all been parading their loyalty to him, but that is the practical effect of their evidence.⁴³

Later in January Gascoigne confirmed Comyns Carr's assessment and illustrated how MacArthur sought to intervene at times in the conduct of the trial. Tojo had handled his defence skilfully, outmanoeuvred Keenan, and made clear his standing in the eyes of the Japanese people. MacArthur demonstrated his anxiety at the blundering manner in which Keenan had acted:

He [MacArthur] had arranged with Chief Prosecutor Keenan that there should be no cross-examination of Tojo and that after Tojo had made his affidavit, he should be told to 'stand down'. But in the excitement of the moment Keenan had persisted with his examination of the defendant and the results had reflected extremely badly upon the Prosecution.⁴⁴

As regards the accused, the greatest controversy surrounded Tojo and Shigemitsu Mamoru. In the case of Tojo, this arose from his unusually prominent role in directing war preparations and then Japan's pursuance of a vast

war in Asia and the Pacific until he was compelled to relinquish the office of prime minister in 1944. In the case of Shigemitsu, the controversy resulted from the contention of some, including influential British acquaintances, that he had worked for peace and that he had erroneously been accused of sharing responsibility for advocating aggressive war. Shigemitsu had served as ambassador in London between 1938 and 1941, a crucial period in Anglo-Japanese relations due to the heightening of tension provoked by the 'Undeclared War' in China.⁴⁵ Shigemitsu was adroit in fostering contacts with significant figures in the British establishment, notably with Lord Hankey, secretary to the British Cabinet from 1916 to 1938 and subsequently a Cabinet minister under Neville Chamberlain and Churchill; and R. A. Butler, a leading Conservative politician who had served as parliamentary under-secretary in the Foreign Office from 1938 to 1941. In the light of their meetings with Shigemitsu, Hankey and Butler were convinced that the ambassador had done his best to avert war, and they argued that he should not have been prosecuted. Hankey waged a brave campaign in support of Shigemitsu in the House of Lords and outside it.⁴⁶ Sir George Sansom, a distinguished Japanologist and a former member of the staff of the British embassy in Tokyo, provided a succinct, balanced assessment of Shigemitsu in December 1946:

Personally, I think it is a mistake to try Shigemitsu, and I understand that it is being done under Russian pressure because Shigemitsu was known to be very strongly anti-Communist and was in office at the time of the Chang-ku-feng incident [in 1938]. Shigemitsu was, of course, a strong nationalist and believed that the Japanese ought to dominate China. As you will recollect, when we were in the Foreign Office together in 1939–40, we felt that Rab [R. A. Butler] and his friends were too friendly with Shigemitsu, whereas Rab thought that we were 'too rigid'. Certainly, Shigemitsu was not the friend of Britain that some alleged him to be, but I do think that he was definitely not in the same category as the hard-boiled military extremists; he had too much sense for that.⁴⁷

Comyns Carr believed that it was correct to prosecute Shigemitsu because of the need to establish a principle not consolidated at Nuremberg:

Namely that the civilian government, not the soldiers, were responsible for the fulfilment of the terms of the Geneva Convention, for the proper treatment of prisoners-of-war, etc. Shigemitsu, as Foreign Minister, had received from the Swiss all the reports of the Japanese ill-treatment of prisoners and had done nothing more than pass them on to the War Office 'for comments'. The War Office very seldom bothered to comment and when they did their explanations were very lame. Shigemitsu showed no concern and, again, simply passed the War Office reports to the Swiss.⁴⁸

At last, in the summer of 1948, the daily grind of the deliberations in court drew to a close, and the time had come for the judges to determine their verdicts. Röling believed that bias was often shown towards the prosecution

and against the defence but that in total the trial had been reasonably fair and certainly necessary.⁴⁹ Röling was, however, critical of the way in which the judgement of the court was decided. Seven judges (from the United States, Britain, China, the Soviet Union, the Philippines, Canada, and New Zealand) organised the drafting and communicated the results to the other four judges (from Australia, France, the Netherlands, and India) as a *fait accompli*. Röling contended that this was not appropriate and that the procedure followed at Nuremberg was correct, whereby a draft was produced on the basis of consensus: the general line of approach should have been discussed in chambers.⁵⁰ With respect to the judgement itself, Röling noted that in making the defendants responsible for crimes against peace, the court was applying *ex post facto* law. He concluded, however, that this was ultimately a political, rather than a legal, decision, and the authority granted to the IMTFE in the charter was clear. Röling also supported 'negative criminality' – the failure to prevent crimes committed by others. The judgement ran to 664 pages. Dissenting opinions were also submitted by Jaranilla, Bernard, Webb, and Röling, and Pal published what he described as a dissentient judgement. These will be considered below.

The court found that a criminal conspiracy, as alleged in Count 1, had been proved:

The conspiracy existed for and its execution occupied a period of many years. Not all of the conspirators were parties at the beginning, and some of those who were parties to it had ceased to be active in its execution before the end. All of those who at any time were parties to the criminal conspiracy or who at any time with guilty knowledge played a part in its execution are guilty of the charge contained in Count 1.⁵¹

The fundamental importance of the charge of 'conspiracy' is demonstrated in that twenty-three out of twenty-five defendants were found guilty of participating in the conspiracy. Matsui Iwane and Shigemitsu were acquitted, but Matsui was convicted of disregard of duty to secure the observance and prevent breaches of the laws of war (Count 55), and was sentenced to death. Of the other defendants, twenty-two out of twenty-five were found guilty of waging war against China (Count 27), and eighteen were found guilty of waging war against the United States, the British Commonwealth, and the Netherlands (Counts 29, 31, 32). Only two were found guilty of waging war against France (Count 33) and against the Soviet Union at Lake Khassan in 1938 (Count 35); three were found guilty of waging war against the Soviet Union at Nomonhan in 1939 (Count 36); five were found guilty of ordering, authorising, or permitting atrocities (Count 54), and seven were found guilty of Count 55.

Seven of those found guilty were sentenced to death by hanging. These were Doihara Kenji, Hirota Koki, Itagaki Seishiro, Kimura Heitaro, Muto Akira, Matsui, and Tojo. Deep controversy surrounded the death sentence against

Hirota, a former Prime Minister and Foreign Minister who was awarded a death sentence by six out of eleven judges. Among the dissentients, Webb was opposed to the passing of any death sentences, and Röling held that Hirota was definitely not guilty of Count 1.⁵²

Five of the judges produced separate dissents. The Philippines judge, Jaranilla, dissented on the grounds that the sentences were too lenient, but this was a rather minor statement in comparison with the others. The French judge, Bernard, produced a convoluted statement. He believed that aggressive war was a crime but that sufficient proof against certain of the defendants was lacking. His most trenchant observation concerned the exclusion of Emperor Hirohito from the trial. 'It cannot be denied, it had a principal author who escaped all prosecution and of whom in any case the present Defendants could only be considered as accomplices.'⁵³ Pal produced an extremely lengthy dissent, which was published in Calcutta in 1953. This was cleverly argued and criticised the considerable weakness in the functioning of the IMTFE. Pal made the most of the vagueness and uncertainty within international law. While not excusing Japanese atrocities, he revealed sympathy for the dilemmas facing Japanese leaders and concluded that it was not appropriate to convict the accused.

Webb stated that as he had been unable to agree with a majority of the Tribunal on the law and on the method of ascertaining the facts, he had proposed that judges should, if they wished, draft their own judgements. Subsequently, if any judge found himself to be in essential agreement with the majority, his judgement could be withdrawn. As matters turned out, Webb concluded that in most, if not all, respects, his judgement was close to that submitted by the majority, and therefore he had withdrawn his judgement except for a short statement. Here Webb argued that aggressive war was clearly a crime and that no one involved could escape responsibility, whatever his rank and status. Moreover, the charge of 'conspiracy' was permissible in the British Commonwealth, although some judges disapproved of it. Webb was opposed, however, to the imposition of death sentences. It was not wise to hang elderly men, and it would be preferable to imprison them for a prolonged period, probably outside Japan. Webb agreed with Bernard that the Emperor should not have been removed entirely from the trial. Whatever the precise role fulfilled by Hirohito, it could not be denied that he occupied a central position in the Japanese state.⁵⁴

The most balanced and cogent dissenting opinion was compiled by Röling from the Netherlands. Röling was deeply sceptical of the merits of pursuing 'crimes against peace' in the Tokyo trial. The Pact of Paris (the Kellogg–Briand pact) of 1928, upon which the prosecution had placed strong emphasis, contained the significant reservation that each state was able to determine when circumstances justified recourse to war in self-defence, and Röling noted appreciable differences of opinion among those authorities active in the sphere of international law when it came to ascertaining the meaning of the Pact of

Paris. Röling emphasised, however, the responsibility of the military for stimulating aggression:

It may be stated at this point that, unlike other crimes, the crime of aggression is such that the emphasis falls upon the activities in preparation. He who propagates, or plans, or starts the aggression takes upon himself heavier responsibility than the statesman who cannot but accept the consequences of previous events, or who carries on an established policy.⁵⁵

Röling also defined the criteria by which it was possible to impose criminal responsibility upon an official for certain acts which he had not directly ordered or permitted. These were first, that the official knew, or should have known, of the acts committed. If he *should* have known, lack of actual knowledge could not be claimed in self-defence. Second, he must have possessed the power to prevent the acts: atrocities would be committed in all wars and could not be prevented absolutely. Criminal responsibility arose only where all possible steps to avert war crimes had not been adopted. Finally, he must have had the duty to prevent these acts: a specific obligation had to be investigated, placing on officials or military commanders, criminal responsibility for some 'omissions'.⁵⁶

Röling argued that as the law presently stood, it was not so much the end that counted but rather the means. This arose because of the difficulty in defining ultimately aggressive aims by means that were not illegal in themselves. In the case of Tojo, Röling discerned a very high degree of responsibility, amounting to deception, in the pursuance of aggression. Tojo had deceived the Emperor. He had been nominated for the office of minister of war and subsequently prime minister because it was believed that he could maintain effective discipline and possibly persuade younger army officers to accept a negotiated diplomatic solution to the crisis in Eastern Asia and the Pacific. In contrast, Hirota's responsibility was more limited. He had followed a devious, subtle policy of securing a gradual Japanese domination of Eastern Asia, including the non-violent expulsion of Western interests from Asia. Decisions taken in August 1936 had been fundamental to expansion, although the most vital time for decision had occurred in September 1940 with the conclusion of the tripartite pact comprising Japan, Germany, and Italy. Hirota had been partly responsible for the former but not the latter.

In keeping with his scepticism about prosecuting 'crimes against peace' Röling opposed death sentences for those convicted solely of such offences. Internment for life was the correct punishment. Thus, he agreed that Araki Sadao, Hashimoto Kingoro, Hiranuma Kiichiro, Hoshino Naoki, Minami Jiro, Kaya Okinori, Oshima Hiroshi, Shiratori Toshio, and Suzuki Teiichi, who had been found guilty of conspiracy to wage a war of aggression or of waging a war of aggression, but not guilty of any conventional war crime, should suffer life imprisonment – the same punishment had been also been awarded to Koiso Kuniaki and Umezumi Yoshiro. By contrast, the majority judgement had

sentenced Oka Takasumi, Sato Kenryo, and Shimada Shigetaro to life imprisonment; Röling argued that they should have been found guilty of conventional war crimes and received death sentences. Röling approved the death sentences for Doihara, Itagaki, Kimura, Matsui, Muto, and Tojo, but he considered that Hirota, whom the majority had sentenced to death, Hata Shunroku, Kido, and Hirota, who had received life imprisonment, and Togo Shigenori, and Shigemitsu, who had been awarded prison terms of twenty and seven years, respectively, should have been acquitted.⁵⁷ With respect to Hirota, Röling felt that while he might have been guilty of political immorality he did not belong to 'those arch-aggressors who are judged by this Tribunal to deserve the death penalty'.⁵⁸

In essence, therefore, Röling sought to dissociate himself from the more sweeping, and perhaps biased, decisions of the majority, and yet to recognise the enormity of the atrocities committed by the forces of the Japanese state. In the main, he believed that the military was responsible for these atrocities, and that generals who came within the criteria he had established should be punished severely. Röling did not object to the imposition of the death penalty, as did Webb, nor did he accept the critical view of Emperor Hirohito expressed by Webb and Bernard. He also rejected the interpretation of Pal, which failed to recognise the necessity of punishing those Japanese leaders bearing responsibility for the shocking conduct of the armed forces.

Once the judgement and verdicts had been announced, the Allied governments had to determine their responses to the submission of appeals by the condemned. Gascoigne, head of the British liaison mission, reported on 12 November 1948 that MacArthur intended to convene a meeting of all heads of missions in Tokyo, representing all countries attending the Far Eastern Commission (FEC), to request their opinions as to whether sentences should be 'approved, reduced or otherwise altered'. Gascoigne recommended that he (Gascoigne) should make no observations.⁵⁹ MacArthur was bound to consult the Allied Council for Japan (ACJ) and the FEC before deciding whether to approve or reject sentences. MacArthur could not increase the severity of sentences. The consensus in the British Foreign Office was that despite some unsatisfactory features, such as the incompetence of the chief counsel for the prosecution and some divergences between the judges, the trial had been conducted fairly. It would be most sensible not to offer any comments and not to intervene on behalf of any of the accused – to do so 'might well involve us in press and parliamentary criticism of a very disagreeable nature'.⁶⁰ The Attorney General was consulted, and Shawcross expressed agreement with the response proposed by the Foreign Office.⁶¹

Surprise was expressed in the Foreign Office at the dissenting opinions submitted by Webb and Pal.⁶² Webb's remarks concerning the Emperor were deplored, as casting doubt over the equity of the trial presided over by Webb himself.⁶³ Rumours circulated in Tokyo that the Australian government might support Webb's opposition to the implementation of death sentences.⁶⁴

MacArthur met representatives of the FEC countries on 22 November. He invited observations on the sentences handed down. The representatives of Australia, Canada, China, France, New Zealand, the Philippines, the United Kingdom, the United States, and the Soviet Union indicated no objection to the implementation of sentences. The Canadian representative added that he would not object in principle to any proposal for clemency. The representative of the Netherlands urged changes comprising reduction in the terms of imprisonment imposed on Hata, Togo, and Umezumi to ten years each, and commutation of Hirota's death sentence to imprisonment for life. The Indian representative drew attention to Webb's opposition to death sentences and observed that unanimity among judges should be required for the imposition of a death sentence. MacArthur stated his opinion that all sentences should be carried out.⁶⁵

Gascoigne summarised Japanese press reactions. In essence these concluded that the Japanese people must accept condemnation for pursuing a war of aggression and must ensure that such a situation did not recur; a few reservations were stated regarding the application of *ex post facto* law.⁶⁶ Sir Robert Craigie, the last British ambassador to Japan before the outbreak of war, wrote to the Foreign Office criticising certain of the sentences and castigating the death sentence passed on Hirota. Dudley Cheke minuted that Craigie had offered no evidence, and that Comyns Carr had expressed the opinion that Hirota was the first Japanese leader to outline a programme of comprehensive aggression.⁶⁷ Comyns Carr had returned to London by mid-November and was consulted by the Foreign Office. He was opposed to any reduction in sentences.⁶⁸ Hankey and his associates were vocal in censuring the prison sentence passed on Shigemitsu, but Comyns Carr believed it was justified. "The Tribunal had seen evidence that, at a time when Shigemitsu was protesting about his friendship to Britain and America, he had in fact advised the Japanese Foreign Office not to attack Britain and America "because they were too strong" but to attack France, Holland and Portugal "because they could do nothing about it." "⁶⁹ Comyns Carr added that it was incorrect to state that it was only on Soviet insistence that Shigemitsu had been brought to trial. As regards the position of Emperor Hirohito, Comyns Carr modified an opinion he had expressed previously and guessed that, if the Emperor had been tried, he would probably have been acquitted by a fair-minded tribunal.⁷⁰

MacArthur wished to terminate the proceedings as quickly as possible. He rejected a passionate appeal submitted by the American Ben Bruce Blakeney on behalf of all the defence counsel⁷¹ and ordered that the death sentences should be carried out swiftly. The condemned were hanged on 23 December 1948 in the presence of representatives of each of the countries belonging to the ACJ.

One of the enduring controversies of the trial surrounded the role of the Emperor, and this was stimulated by Webb's dissenting opinion. In Britain the *Manchester Guardian* described the outcome of the IMTFE as somewhat disappointing. Dissatisfaction was accentuated by the exclusion of the

Emperor from the trial. Using wartime terminology, the newspaper commented a little sardonically, that the Emperor was in a 'reserved occupation'. This was understandable in the context of MacArthur's reform programme, which was aimed at enlisting the positive support of the Japanese people 'but it had a lamentable effect upon the legal fabric of the case'.⁷² Sansom, the British diplomat who was then in Tokyo, stated in January 1946 that it would be 'a major blunder' to indict the Emperor and added that Keenan concurred.⁷³ In strict legal terms the objection of the *Manchester Guardian* was justified. Whatever power the Emperor did or did not exercise, he had occupied a central symbolic position in the state and was conversant with many secret aspects of the functioning of the government. Full defence of the accused was handicapped by the total exclusion of the Emperor from the trial. Political realities, however, dictated exclusion: the Truman administration and the Attlee government were suitably convinced.

There were undoubtedly numerous weaknesses in the structure and development of the Tokyo trial. Richard Minear made the most of these defects in his lively, concise survey of the trial.⁷⁴ Minear was deeply influenced by revulsion against the contemporary war in Vietnam, and this led him to a rather unbalanced treatment of the subject. At this point I must indicate that as a result of preparing this chapter, I have changed my mind on the necessity for a trial of Japanese leaders. For many years I was largely persuaded by the arguments advanced by Minear that the trial was an excessive, distorted version of 'Victors' Justice', which did little, if anything, to advance the cause of international justice. Three aspects have led me to modify my view – the scale and savagery of the atrocities committed by the Japanese armed forces during the conflicts in Asia and the Pacific; examining more closely the arguments advanced by Röling; and reflecting on the impact of the shocking atrocities committed in Rwanda and the former Yugoslavia in the 1990s, to which must be added the mass murder pursued by the Khmer Rouge regime in Cambodia in the 1970s and the situation in East Timor in 1999. John Dower has rightly pointed out that racism, often of a virulent nature, affected all states which participated in the wars in Asia and the Pacific. Atrocities were committed by both sides or all sides in the war.⁷⁵ However, Japanese forces were responsible for the most widespread, revolting crimes, affecting all races and both sexes. These comprised POWs and civilians equally. As regards the latter, evidence from every war theatre involving the Japanese armed forces reveals the systematic resort to torture, rape, and murder against men, women, and children: the most extreme examples were seen in Nanking (China) in December 1937 and in Singapore in February 1942. On both occasions, Chinese were the victims of extreme cruelty. Abundant evidence of a terrible character was submitted to the IMTFE, and the transcript of the trial is often occupied with the details of these terrible events and of similar acts committed throughout Asia and the Pacific. Yuki Tanaka has attempted an analysis and explanation of how such atrocities could occur in his study published in

English in 1996.⁷⁶ In essence Tanaka attributes the conduct to the unhealthy fostering of militarism within the framework of narrow emperor-centred nationalism. The original cult of *bushido* was perverted in the twentieth century, and the chivalrous attitudes shown during the Russo-Japanese war of 1904–5 were replaced by the extreme brutality encouraged in the armed forces during the 1930s.⁷⁷ Japanese officers were usually rather ignorant, if not wholly ignorant, of international law: it had not figured very prominently in their military education. Tojo, as Prime Minister, stated in 1942 that POWs should be made to work hard in the interests of assisting the consolidation of the Greater East Asia Co-Prosperity Sphere.⁷⁸ When cross-examined in the trial, Tojo replied that his remarks were consistent with the Geneva Convention (1929) but that he had never sanctioned the atrocities revealed in the IMTFE, and they could not possibly be defended.⁷⁹

Atrocities of such magnitude cannot simply be attributed to those who carried them out. The army, naval, and certain civilian leaders must accept at least some of the responsibility for such a catalogue of revolting war crimes. Here I am persuaded by Röling's opinions. He and Minear participated in a symposium in Japan in 1983. Each was critical of the conduct of the IMTFE, but Röling argued that, despite its significant defects, the trial was worth while and it had significant accomplishments to its credit.⁸⁰ Röling was a courageous man of progressive views: his experience in Tokyo convinced him to become a vigorous campaigner for international peace and for the extension and enforcement of international law. He was the most impressive and cogent of the judges who participated in the IMTFE.

Both the American and British governments came to regard the Tokyo trial as an embarrassment which should be brought to an end as soon as feasible and not repeated. Shawcross, the British Attorney General, wrote to W. E. Beckett, the senior legal adviser in the Foreign Office, in September 1947 opposing the holding of further war crimes trials in Tokyo. 'I am quite sure that any repetition of the present proceedings at Tokyo would be disastrous.'⁸¹ Disillusionment was the consequence of lack of sufficient preparation in the United States and Britain for a trial of the complexity of that held in Tokyo between 1946 and 1948. Nevertheless, I am persuaded by Röling that the importance of the Tokyo trial is that it has contributed, despite its serious flaws, to the consolidation of international law and to holding the leaders of states responsible for the grave crimes committed under the authority of the regimes they have led.

Notes

Transcripts/translations of Crown copyright in the Public Record Office, Kew, appear by permission of the Controller of HM Stationery Office. During the preparation of this chapter, I have gained from reading Catherine Whiteside, 'Arbitrary justice: the establishment, defendants, and controversy of the Tokyo war crimes trial', unpublished BA dissertation, University of Manchester, History Department, 1997.

- 1 For a valuable reassessment of the significance of the use of the atomic bomb against Japan, see Sadao Asada, 'The shock of the atomic bomb and Japan's decision to surrender – a reconsideration', *Pacific Historical Review* 67: 4 (November, 1998), 477–512.
- 2 For a balanced discussion of the reign of Hirohito, see Stephen Large, *Emperor Hirohito and Showa Japan* (London: Routledge, 1992). For a longer and more critical study, see H. P. Bix, *Hirohito and the Making of Modern Japan* (London: Duckworth, 2001).
- 3 For a wide-ranging, fascinating re-evaluation of the occupation, see John Dower, *Embracing Defeat: Japan in the Aftermath of World War II* (London: Allen Lane/Penguin Press, 1999). Dower discusses the nature of the Tokyo trial and its concomitants in ch. 15 (pp. 443–84). See also R. E. Ward and Sakamoto Yoshikazu (eds), *Democratizing Japan: the Allied Occupation* (Honolulu: University of Hawaii Press, 1987).
- 4 For a balanced sympathetic study, see A. L. Hamby, *Man of the People: a Life of Harry S. Truman* (Oxford: Oxford University Press, 1995). The tide may now be turning in the opposite direction, as far as some historians are concerned. See the critical presidential address to the Society for Historians of American Foreign Relations by Arnold A. Offner, 'Another such victory', *Diplomatic History* 23: 2 (1999), 127–55.
- 5 The most comprehensive biographical discussion of MacArthur's role in Japan is found in the concluding volume of the study by D. Clayton James, *The Years of MacArthur*, vol. 3 *Triumph and Disaster, 1945–1964* (Boston: Houghton Mifflin, 1985).
- 6 See Dower, *Embracing Defeat*, which contains many astute observations on how MacArthur viewed the challenges facing him in directing the reconstruction of postwar Japan.
- 7 For a discussion of Anglo-American relations as concerned Japan, see Roger Buckley, *Occupation Diplomacy: Britain, the United States and Japan, 1945–1952* (Cambridge: Cambridge University Press, 1982); and Peter Lowe, 'Sir Alvary Gascoigne in Japan, 1946–1951', in Ian Nish (ed.), *Britain and Japan: Biographical Portraits* (Folkestone: The Japan Library, 1994), pp. 279–94, 340–2.
- 8 Buckley, *Occupation Diplomacy*, p. 108.
- 9 Public Record Office, Kew (hereafter PRO), LCO2/2983, letter from Patrick Dean, Foreign Office (hereafter FO) to Major General the Viscount Bridgeman, War Office, 14 November 1945.
- 10 PRO, LCO2/2983, telegram from the Dominions Office to Canada, Australia, New Zealand, and South Africa, 4 December 1945.
- 11 *Ibid.*, letter from Dean to Sir Hartley Shawcross, 14 December 1945.
- 12 PRO, FO371/57423/9642, despatch from the Secretary of State for Burma to the Governor of Burma, 18 January 1946.
- 13 PRO, FO371/57427/5116, Minute by R. G. J. Scott-Fox, 4 May 1946.
- 14 For a useful, brief biographical essay on Arthur Comyns Carr, see the entry by Roy Douglas in Duncan Brack (ed.), *Dictionary of Liberal Biography* (London: Politico's Publishing, 1998), pp. 84–5.
- 15 PRO, FO371/57423/1177, telegram from Washington [the Earl of Halifax] to FO, 29 January 1946. Here the British ambassador reported that the American State Department declined to approve the appointment of an Indian judge.

- 16 R. H. Minear, *Victors' Justice: the Tokyo War Crimes Trial* (Princeton, N.J.: Princeton University Press, 1971). For a helpful, concise survey of war crimes trials since 1945, see Yves Beigbeder, *Judging War Criminals: the Politics of International Justice* (London: Macmillan, 1999).
- 17 PRO, FO 371/57423/1620, telegram from Tokyo [Oscar Morland] to FO, 8 February 1946.
- 18 *Ibid.*, minute by Foulds, 12 February 1946.
- 19 *Ibid.*, telegram from FO to Tokyo [the British liaison mission], 15 February 1946.
- 20 See B. V. A. Röling, *The Tokyo Trial and Beyond: Reflections of a Peacemonger*, ed. and intro. by Antonio Cassese (Oxford: Polity Press/Blackwells, 1993), p. 87.
- 21 PRO, FO371/57423/1620, telegram from Tokyo [Alvary Gascoigne] to FO, 10 November 1947.
- 22 Ann Tusa and John Tusa, *The Nuremberg Trial* (London: BBC Books, repr. with new intro. 1995), p. 112.
- 23 Röling and Cassese, *The Tokyo Trial and Beyond*, pp. 29–30.
- 24 PRO, FO371/63820/15007, telegram from Tokyo [Gascoigne] to FO, 11 November 1947.
- 25 Röling and Cassese, *The Tokyo Trial and Beyond*, pp. 19–91; and R. J. Pritchard and S. B. Zaide (eds), *The Tokyo War Crimes Trials*, 22 vols (New York and London: Garland Publishing, 1981), vol. 21, pp. 1–249 (dissenting opinion of Röling). See also the interesting comments by Röling when he participated in a symposium held in Tokyo in 1983, as recorded in C. Hosoya, N. Ando, Y. Onuma, and R. Minear (eds), *The Tokyo War Crimes Trial: an International Symposium* (Tokyo: Kodansha International, 1986). I am most grateful to Professor Ian Nish for drawing the latter to my attention.
- 26 Röling and Cassese, *The Tokyo Trial and Beyond*, p. 29.
- 27 Röling's comments, as recorded in Hosoya *et al.*, *The Tokyo War Crimes Trial*, p. 190.
- 28 See Minear, *Victors' Justice*, pp. 183–4, where the text is reproduced.
- 29 *Ibid.*, pp. 185–92 for the text of the charter.
- 30 Röling's comments, as recorded in Hosoya *et al.*, *The Tokyo War Crimes Trial*, p. 190.
- 31 PRO, FO371/57428/7983, minute by F. F. Garner, 13 November 1946.
- 32 *Ibid.*, telegram from Tokyo [Gascoigne] to FO, 26 December 1946.
- 33 *Ibid.*, FO371/54728/6601, letter from Christmas Humphreys to Scott-Fox, 16 July 1946.
- 34 *Ibid.*, FO371/63820/13703, telegram from Tokyo [Gascoigne] to FO, 9 October 1947.
- 35 *Ibid.*, FO371/63820/15007, copy of a letter from Comyns Carr to Shawcross, 6 October 1947.
- 36 *Ibid.*
- 37 *Ibid.*, copy of a letter from Comyns Carr to Shawcross, 21 October 1947.
- 38 Pritchard and Zaide (eds), *The Tokyo War Crimes Trial*, vol. 15, pp. 36170–36840.
- 39 *Ibid.*, vol. 15, pp. 36180; 36327–8; 36381.
- 40 *Ibid.*, vol. 15, pp. 36534–5.
- 41 *Ibid.*, vol. 15, p. 36570.
- 42 PRO, FO371/69831/1566, copy of a letter from Comyns Carr to Shawcross, 2 January 1948.

- 43 *Ibid.*
- 44 *Ibid.*, FO371/69831/2130, telegram from Tokyo [Gascoigne] to FO, 25 January 1948.
- 45 See the references to Shigemitsu in Peter Lowe, *Great Britain and the Origins of the Pacific War* (Oxford: Clarendon Press, 1977); and Antony Best, *Britain, Japan and Pearl Harbor: Avoiding War in East Asia* (London: Routledge, 1995).
- 46 See Lord Hankey, *Politics, Trials and Errors* (Oxford: Pen-in-Hand, 1950), for an account of his campaign.
- 47 PRO, FO371/57428/8209, letter from Sir George Sansom to M. E. Denning, 4 December 1946.
- 48 *Ibid.*, FO371/69833, minute by D. J. Cheke, based on a discussion with Comyns Carr, 16 November 1948.
- 49 Röling and Cassese, *The Tokyo Trial and Beyond*, pp. 51–4.
- 50 *Ibid.*, p. 63.
- 51 Minear, *Victors' Justice*, p. 198.
- 52 Röling and Cassese, *The Tokyo Trial and Beyond*, p. 45. See also Hosoya *et al.*, *The Tokyo War Crimes Trial*, p. 131.
- 53 Pritchard and Zaide (eds), *The Tokyo War Crimes Trial*, vol. 21, p. 22 (dissenting opinion of Bernard).
- 54 *Ibid.*, vol. 21, pp. 3–4, 7–8, 17 (dissenting opinion of Webb).
- 55 *Ibid.*, vol. 21, p. 52 (dissenting opinion of Röling).
- 56 *Ibid.*, vol. 21, pp. 59–60.
- 57 *Ibid.*, vol. 21, pp. 67, 81–2, 124, 178.
- 58 *Ibid.*, vol. 21, pp. 197–8.
- 59 PRO, FO371/69833/15910, telegram from Tokyo [Gascoigne] to FO, 12 November 1948.
- 60 *Ibid.*, FO371/69833/15911, minute by E. J. F. Scott, 15 November 1948.
- 61 *Ibid.*, letter from M. E. Reed (Law Officers Department) to Sir O. Sargent, 18 November 1948.
- 62 *Ibid.*, FO371/69833/15996, minute by Scott, 15 November 1948. For Pal's views, stated at great length, see R. B. Pal, *International Military Tribunal for the Far East: Dissident Judgment of Justice R. B. Pal* (Calcutta: Sanyal, 1953). Note also the observations by Dower, *Embracing Defeat*, pp. 469–74.
- 63 *Ibid.*
- 64 PRO, FO371/69833/16062, telegram from Tokyo [Gascoigne] to FO, 16 November 1948.
- 65 *Ibid.*, FO371/69833/16062, despatch from the Commonwealth Relations Office to the Government of New Zealand, 28 November 1948.
- 66 *Ibid.*, FO371/69833/16149, telegram from Tokyo [Gascoigne] to FO, 17 November 1948.
- 67 *Ibid.*, FO371/69833/16327, letter from Sir Robert Craigie to Sargent, 18 November 1948 [wrongly dated 'December'], with minute by Cheke.
- 68 *Ibid.*, letter from Sargent to Craigie, 24 November 1948.
- 69 *Ibid.*, minute by Cheke, 16 November 1948.
- 70 *Ibid.*, minute by Cheke, 17 November 1948.
- 71 For the text, see Minear, *Victors' Justice*, pp. 204–8.
- 72 *Manchester Guardian* (13 November 1948), enclosed in PRO, FO371/69834/16646.

- 73 PRO, FO 371/57423/1194, telegram from Tokyo [Gairdner] to FO, 30 January 1946.
- 74 Minear, *Victors' Justice*.
- 75 See John Dower, *War Without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1986) and *Embracing Defeat*.
- 76 Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II* (Oxford: Westview Press, 1996), p. 3.
- 77 *Ibid.*, pp. 206–9.
- 78 *Ibid.*, p. 18.
- 79 Pritchard and Zaide (eds), *The Tokyo War Crimes Trial*, vol. 6, p. 14576, vol. 17, p. 42017.
- 80 Note the contributions and answers to questions contained in Hosoya *et al.*, *The Tokyo War Crimes Trial*, pp. 56–67, 105–21, 152–8, 170–208; and also Röling and Cassese, *The Tokyo Trial and Beyond*, p. 86.
- 81 PRO, FO371/63820/12511, letter from Shawcross to W. E. Beckett, 9 September 1947.