

**MEETING OF JUDGES, PROSECUTORS AND EXPERTS
THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL 2000
26-27 OCTOBER 2000
THE HAGUE**

IN ATTENDANCE

Co-Convenors:

Indai Sajor
Yayori Matsui
Chung Ok Yune

Judges:

Gabrielle Kirk MacDonald
Christine Chinkin
Camen Maria Argibay
Vitit Muntarbhorn
PN Bagwati (26 October)
Willy Mutunga (27 October)

Prosecutors and Experts:

Sihyun Cho (Korea)
Hyun A Yang (Korea)
Yasushi Higashizawa (Japan)
Patricia Sellers (with Tina Griffin, ICTY)
Rhonda Copelon
Tina Dolgopol
Fritz Kalshoven

IOC/Secretariat:

Rutsuko Shoi
Tate Arellano, Jr.
Peter Payoyo

VENUE: NOVIB Building, The HagueA

DECISION POINTS

I. General nature and mandate of the Tribunal

The view that the Tribunal was directly created out of, or emanates from, the “people’s sovereignty” was accepted.

The participants also welcomed the view that the Tribunal should be regarded as an extension of, or an appendage to, the post-war International Military Tribunal for the Far East. The overall mission of the Tokyo Tribunal should then be seen in that context: How would the IMTFE have decided the case of sexual slavery, which was never prosecuted before, if it had taken cognizance of sex/gender-based crimes. In this sense, the Tribunal is a symbolic and a political gesture with significant legal ramifications.

The victims/people left out of the IMTFE justice system will be given the opportunity to present their side. The Tribunal will give the victims the chance to tell their story/stories.

II. Revisions to the Tribunal Charter

It was pointed out that while the Charter has been adopted in Manila on 30 July 2000, the question regarding the finality of the Charter was an open matter. The Meeting, therefore, considered further changes/modification to the text of the Charter.

For the texts of the revisions, see *COMPARATIVE TABLE* of the Manila Charter and the Charter as revised in the Hague. (ATTACHED)

III. The problem of Due Process

There was unanimity of views that the delicate issue of due process should be addressed carefully: what is at stake here is the credibility of the Tribunal.

A. Notice to the Government of Japan

A formal Notice to the Government of Japan will be sent out, under signature of the Tribunal Registry, informing the Japanese government of the Tokyo Tribunal. The final text of this notice/invitation will be worked out through consultations via e-mail.

B. Individual Defendants

It was agreed that individual defendants will be named/identified in the country Indictments. The Meeting was unanimous on the point that Emperor Hirohito will be named.

All the Prosecutors will again consult one another in order to shorten the list of other individual defendants (high ranking officials) who shall be named in the caption of the separate Indictments. There was general agreement that the list of 39 accused individuals identified in the Indictments was too long and unwieldy, and could prove problematic. It was agreed that those individuals whose names will not appear in the caption can simply be mentioned in the body of the Indictments as evidence.

The judges' position on who are to be named as accused was expressed: irrespective of whether or not an accused person was already previously tried or convicted, the Prosecutors may name any individual as a defendant provided there is strong evidence to support his guilt.

C. Representation of Defendants

The Meeting took note of the fax-letter from the Koga&Partners law office, dated 26 October 2000, which declined the invitation to undertake the role as defense counsel. In light of this development, it was proposed that a "stand-by" defense counsel, to be chosen from the Japanese prosecution team, should be considered. It was agreed that the Japanese team of Prosecutors (c/o Atty. Higashizawa) will look into the possibilities to remedy this gap.

IV. Tribunal proceedings

A. Standard of Proof

The Judges accepted the standard laid down in Art. 14(2): "evidence before the Tribunal". The Judges, however, made the caveat that with respect to the individual accused, there must be strong evidence to support guilt. If the Judges are not satisfied that there is strong evidence against an individual defendant, the Judges will strike out the name of that defendant in the Indictment during the Pre-trial Conference. The rationale for the Judges' position is that there should be no risk of a non-guilty verdict; the Judgment would then be simply regarded as a confirmation of the Indictments.

B. Admissibility of Evidence

All witnesses and experts must affirm their Statements. Only those witnesses who affirm their Statements will be named in the Judgment.

C. Deadlines

The Judges announced the following deadlines:

1. Judges should receive the evidence from the Prosecutors by November 10.
2. A chart prepared by the Prosecutors showing the evidence against each of the defendants must be submitted by November 3.
3. The Prosecutors' Pre-trial Brief/Memorandum must be received by November 10
4. The final Indictments must be submitted by November 6

D. No Presiding Judge

The Judges put forward the proposal, in line with the idea or principle of "equality in action", that there shall be no presiding judge.

E. Post-Trial Meeting

On the suggestion of the Judges, it was agreed that there will be a Post-Trial Meeting.

V. The Judgment

Consistent with the revisions made in Article 14 of the Manila Charter (see table), the Meeting agreed that individual judges may write separate or dissenting opinions. However, it was generally agreed that no judge should register a dissent on the Tribunal Charter as a process.

The Judges shall decide on the ceremony of how to render the Judgement.

A. Summary of Findings

The Judges will work on a "Summary of Findings" which will be issued on 12 December in Tokyo. This summary will contain a fair amount of detail.

B. Judgment proper

The Judgment of the Tokyo Tribunal will be promulgated on International Women's Day, 8 March 2001. Due to lack of time, and considering its historical significance, this lengthy reasoned document cannot be issued in Tokyo in December.

The two- step process of rendering the Judgement (‘ Summary of Findings’ to be followed by the elaborate ‘Judgement’) is not unusual. It is observed in the ICTY, for example.

C. Expectations on the form and content of the Judgment

1. Considering the nature of the Tribunal as well as the symbolic/moral character of the Judgement, there will be no excessive legal formalism employed. The language used in the Judgement will be simple and accessible to all.
2. Overall, the minimum expectations of the survivors must be satisfied: sexual slavery shall be declared a crime and Emperor Hirohito shall be convicted.
3. The responsibility of States for continuing damage/violence will be addressed.
4. The judges will creatively explore the meaning of individual as well as state responsibility in the context of the Tokyo Tribunal 2000.

VI. **Public Relations**

A. Maximizing the impact of the Tribunal as a media event

1. A statement to the press shall be prepared, to be released alongside the Judges “Summary of Findings”
2. Testimonies and other relevant documents shall be posted on the internet/ website of the Tribunal.

B. Developments reported

1. East Timor has agreed to join the exercise and has set up a prosecutors’ team; East Timor has also established its own war crime tribunal.
2. The Cambodia War Crimes Committee and the Rwanda War Crimes Tribunal will be represented in Tokyo.
3. The municipal courts of Japan will promulgate decisions in two civil cases involving ‘comfort women’ in late November and early December.
4. The Meeting was briefed on the schedule of events and activities in Tokyo.

By:

Peter B. Payoyo
29 October 2000