INTRODUCTION

Why the Tokyo Trial Now?

Soon after Japan’s defeat in the Pacific theater, the Allied powers established a special international criminal court at the heart of the bombed-out capital of Japan. The Allies named the new court the International Military Tribunal for the Far East, following its predecessor in Nuremberg (which was referred to simply as the International Military Tribunal, or the IMT). The Far Eastern tribunal is more commonly remembered as the Tokyo trial in popular parlance today. At Nuremberg, the Allied prosecuting agency brought before the court Hermann Göring and 23 other German leaders on charges that they waged aggressive war and committed large-scale atrocities, including mass murder of the European Jews. The prosecutors at Tokyo followed suit. They put on trial a group of 28 wartime Japanese political and military leaders. The principal charge against them was that they had participated in the planning and execution of aggressive war in the Asia-Pacific region, dating back to the invasion of Manchuria in September 1931. The prosecutors also charged that the same group of defendants was answerable for atrocities committed by the Japanese armed forces against millions of civilians and prisoners of war in various theaters of war.

The Japanese people today regard the Tokyo trial as a focal point of the remembrance of World War II. There is good reason for them to linger on, and mull over, the significance of this particular historical event even after the passage of six decades. This trial was the first public event, after Japan’s surrender to the Allies, by which the Japanese people gained a unique opportunity for firsthand access to documenta-
tion about the disastrous war and to determine the responsibility of their leaders for initiating it. The Tokyo trial, in this respect, marked the starting point of Japan’s confrontation with its past, a process that continues to this day. To determine its historical significance has proved to be highly complex, however, because there has been disagreement over the legitimacy of the Tokyo Tribunal as an impartial arbiter of the Japanese war, war crimes, and war guilt. This introductory chapter will briefly sketch out the general contour of the debates that have taken place in the postwar period.

Japanese nationalists—including some of those who joined the defense team at Tokyo—were among the first to launch a thoroughgoing criticism of the Tokyo trial. Questioning the Allied moral authority to prosecute the leaders of the vanquished nation, they charged that the true purpose of this special trial was nothing other than to satisfy the desire of the victorious Allied powers for revenge. In support of this contention, they argued that the laws applied at Tokyo were essentially the arbitrary creation of victor nations. They especially made the point that it was an entirely novel idea to prosecute state leaders for the commission of aggressive war. The law criminalizing any type of war, they argued, did not exist before, during, or after World War II. In their opinion, a tribunal that would allow the retroactive application of new law could only be deemed “victors’ justice.” This kind of assessment quickly took root in Japan, and remains the standard understanding of the Tokyo trial today.

The Japanese nationalist claim subsequently received unexpected support from the American academy. In his landmark monograph, *Victors’ Justice: The Tokyo War Crimes Trial* (1971), Richard Minear treated the Tokyo trial as an early manifestation of the self-righteous foreign policy of the United States that culminated in the Vietnam War. He argued essentially that the trial enabled the United States to impose its logic of justice and entrench American supremacy over Japan, and more broadly, in the postwar Asia-Pacific region. His powerful indictment of American neo-imperialism by way of the Tokyo trial was received favorably, and his book continues to serve as the basic reference on the Tokyo trial in the English-speaking world to this day.

Meanwhile in Japan in the 1980s, certain Japanese historians who had been critical of the Japanese nationalists’ assertions began to con-
duct their own research on the Tokyo trial. They, too, concluded that this trial was a politicized event, but the grounds for so concluding were radically different from the ones given by critics in the 1940s and 1950s. The leading historian, Awaya Kentarō, did not deny the historical significance of putting wartime Japanese leaders on trial. He considered rather that the prosecution of Tōjō and other high-ranking Japanese was a crucial step toward Japan’s postwar atonement process. In this regard, he held just the opposite position from that of nationalist critics. His point of criticism lay elsewhere; he found that the Allied powers, and in particular the United States, purposely withheld evidence of certain sensitive war crimes cases. The evidence he found to have been omitted from the prosecutorial effort included that of the “comfort women” system, medical experimentation and bacteriological warfare committed by Unit 731, and atrocities targeted at the Asian civilian populations. Awaya added to this list the exemption of Emperor Hirohito from prosecution. According to his research, the Supreme Commander for the Allied Powers, Gen. Douglas MacArthur, granted special immunity to Hirohito, thereby allowing the wartime head of state to remain above the law. In light of these findings, Awaya concluded that the Tokyo trial was one kind of victors’ justice, in the sense that justice was meted out selectively and according to the victors’ political expediency. This new interpretation in Japan was soon introduced to the United States, adding greater complexity to trans-Pacific debates on the Tokyo trial. Awaya subsequently modified his position in view of new findings that conflicted with his earlier assessment, but his original contention continues to influence American scholarship today.

Each of the interpretive positions taken by the critics above captures certain elements of truth about the Tokyo trial. But as this book will show, their assertions do not always have sufficient supporting evidence in the actual trial records. Some are, in fact, directly contradicted by historical documents. By way of illustration, the transcripts of court proceedings indicate that the prosecuting agency detailed Japanese war crimes rather than withheld information, including some of the crimes that critics charge were neglected. It is true that there was an American cover-up effort with respect to Unit 731. But the same did not apply to a number of other war crimes cases. Military sexual slavery was one such Japanese wartime offense that the Allied prosecutors sought to
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substantiate. Similarly, the common belief that MacArthur granted immunity to Hirohito does not stand up to the test of primary documents. As will be shown in this book, MacArthur had no formal or informal power to make decisions regarding the trial of Hirohito. Those who decided the fate of the Japanese emperor were the leaders of the United States and its allies. The decision they made, moreover, was to keep the option of his trial open, not to grant him immunity; the Allied governments ruled out the latter possibility at the outset. How should one, then, explain the ultimate failure of the Allies to put him on trial? This book will address this and other puzzling questions about the treatment of Hirohito.

As for the contention that the law applied at Tokyo was without precedent, this also proves difficult to sustain when assessed against the actual content of the trial. Such criticism may be validly advanced with respect to the charges related to aggressive war. With respect to war crimes, however, international criminal tribunals today consider that the Tokyo judgment provided useful precedents that help advance the cause of international humanitarian law. The very trial that has been thoroughly discredited in the eyes of the Japanese public, in other words, is gaining international recognition as an important precursor of international prosecutorial efforts today. As subsequent chapters will show, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) cite the Tokyo Tribunal’s legal opinions in some of their recent judgments. This indicates that this trial has become as an integral part of the historical development of the international justice system rather than a judicial anomaly.

A wide variety of sources on the Tokyo trial come under scrutiny in this book. The sources can be divided into two broad categories. The record of the Tokyo trial itself constitutes one category. This includes the Charter of the Tokyo Tribunal, the Bill of Indictment, 48,288 pages of trial transcripts, 5,184 pieces of court exhibits (available on 48 reels of microfilm), the judgment, five separate dissenting and concurring opinions, internal records of the prosecution (available on about 770 reels of microfilm), the drafts of the judgment and judges’ internal memoranda, and records of the defense counsel. This book makes use of published versions of the Charter of the Tribunal, the indictment,
trial transcripts, the judgment, and the separate opinions. User-friendly trial records are provided in *The Tokyo War Crimes Trial*, 22 vols. (accompanied by an additional 5-volume finding aid), and *The Tokyo Judgment: The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946–12 November 1948*, 2 vols. The court exhibits are not available in published sources. The copies of exhibits used in this book have been gathered from the Australian War Memorial Library in Canberra. The microfilmed versions are also available at the National Archives and Records Administration (NARA) in College Park, Maryland. Some of the internal records of the International Prosecution Section have been reprinted in recent years in Japan; this book makes extensive use of the reprinted version. For a fuller set of the prosecution’s records, one would need to go to the archives at College Park, where all of the records are available on microfilm. As for the drafts of the judgments and judges’ internal memoranda, a voluminous record can be found at the National Archives of Australia and the Australian War Memorial Library, both located in Canberra. Australia is the logical place to look for these kinds of records, since the president of the Tokyo Tribunal was Australian. With regard to the records of the defense counsel, this book makes use of memoirs, which are available in the form of books and articles written by former defense lawyers, defendants, and court reporters. Some internal defense records made in preparation for the trial had been kept at the Imperial Household Agency since the end of the trial, and were then transferred to the National Archives of Japan in the 1970s. These records are not discussed in this book, however, since the author was unaware of their existence until the completion of this book. The Japanese national archives also have in their possession the records of the interviews that the Japanese Ministry of Justice had conducted with certain former defendants, defense lawyers, and witnesses in the early 1960s. But these sources remain classified and unavailable to researchers unless their duplicates are deposited for public access elsewhere.

Another set of sources consists of various government records kept by the eleven countries that participated in the Tokyo trial. Whereas the first type of source (as described above) documents the legal proceedings, the second type brings to light the larger politico-military circumstances in which the Tokyo trial was planned and carried out. The languages used in these government records vary, because not all
the participating countries were English-speaking. This book makes use of records collected only from those countries that use the English language. The Allied records that are analyzed come partly from published sources, such as *Foreign Relations of the United States* (commonly known as the FRUS series), *Documents on Australian Foreign Policy, 1937–1949*, and *Documents on New Zealand External Relations, Vol. II: The Surrender and Occupation of Japan*. Additional government documents were collected from archives in Australia, India, and the United States.

This book explores the Tokyo trial thematically, although it is loosely structured along chronological lines as well. Chapter 1, “Lessons from Nuremberg,” explores the Allied policy for the establishment of the Tokyo Tribunal from a comparative perspective. It elicits commonalities and differences between Nuremberg and Tokyo in their original conceptions. Chapter 2, “The Trial of Emperor Hirohito?,” traces Allied policy regarding the treatment of Emperor Hirohito as a war criminal. Chapter 3, “Tōjō and Other Suspects,” explores the criteria that the prosecutors applied to determine whom to indict at the Tokyo trial. The four chapters that follow analyze the content of the trial itself. Chapter 4, “Narrative of the War,” examines the legal concept of aggressive war as defined at Nuremberg and Tokyo. It then explores the Tokyo Tribunal’s central findings on aggressive war charges. Chapter 5, “Leadership Responsibility for War Crimes,” gives an overview of the prosecutors’ pretrial preparations concerning war crimes charges. Chapter 6, “Nanking and the Death Railway,” focuses on two major cases of Japanese-perpetrated mass atrocity: the Rape of Nanking and the Burma-Siam Death Railway. It analyzes the precedents the Tokyo Tribunal established regarding the responsibility of highest-ranking government and military leaders for these atrocities. This chapter also considers the relevance of the Tokyo judgment to current international war crimes trials. Chapter 7, “Documenting Japanese Atrocities,” examines a wide variety of evidentiary material that the prosecutors presented in their effort to substantiate the scope of Japanese war crimes. It also discusses the general rulings and verdicts of the Tokyo Tribunal. The next two chapters explore the historiography of the Tokyo trial. Chapter 8, “The First Trial Analysts,” examines commentaries that the first generation of trial analysts wrote during and in the immediate aftermath of the trial. Chapter 9, “Pal’s Dissent and Its Repercussions,”
provides an in-depth analysis of one of the dissenting opinions submitted to the Tokyo Tribunal and its impact on postwar Japanese debates on the Tokyo trial. Finally, the concluding chapter, “Beyond Victors’ Justice,” traces the development of Japanese scholarship in recent decades and considers the future direction of the study of the Tokyo trial.

The remainder of this introductory chapter will provide background information to set out the trial’s basic chronology and introduce key trial participants and organizations.

The Tokyo Trial: An Overview
By signing the Instrument of Surrender on September 2, 1945, the Japanese government formally recognized the Allied prerogative to mete out “stern justice” to war criminals. Pursuant to this part of the surrender terms, the Allied powers established the international criminal court in Tokyo in January of 1946. They also created some 50 separate special war crimes courts in the former theaters of war in the Asia-Pacific region, which fell under national jurisdiction of the individual Allied countries.

The prosecutorial effort before the Tokyo Tribunal began on May 3, 1946. This trial turned out to be protracted—far slower than its predecessor at Nuremberg. It was due largely to the extreme difficulty in carrying out simultaneous translation between English and Japanese, the two official languages used in the courtroom (Fig. 0.1). The Nuremberg court had a similar problem with the translation of as many as four languages (English, French, German, and Russian), but the challenges faced by the participants at Tokyo were significantly greater because of the different linguistic roots of the two languages. As the judges subsequently commented in the judgment, “Translations cannot be made from the one language into the other with the speed and certainty which can be attained in translating one Western speech into another.” To complicate the matter, some witnesses made statements in Chinese, French, German, Mongolian, and Russian. Their testimony, too, needed to be translated into English and Japanese. Adding to the language problem was “a tendency for counsel and witnesses to be prolix and irrelevant,” largely arising from the Japanese lack of familiarity with Anglo-American court techniques such as cross-examination. The trial consumed two
and a half years in the end, as opposed to a single year at Nuremberg. The Tokyo Tribunal heard the prosecution’s case between June 4, 1946, and January 24, 1947. The defense case lasted for a longer period, between February 24, 1947, and January 12, 1948. The Tribunal adjourned on April 16, 1948, after hearing the rebuttal, sur-rebuttal, and summations of the two parties. The Tribunal reopened the court on November 4 of the same year and delivered the judgment. After giving sentences to the individual defendants on November 12, the Tokyo Tribunal dissolved without any special ceremony to mark its conclusion.

The courtroom at Tokyo was modeled after its European predecessor, but the buildings that contained the two tribunals were quite different (Fig. 0.2). The one at Nuremberg was set within a large building complex known as the Palace of Justice. Previously it had accommodated the appeals court for the region of Nuremberg. At Tokyo, the new court was constructed within the former Japanese military academy at Ichigaya in central Tokyo. The building had housed the war ministry and the army general headquarters during the war. The sturdy, spacious, three-story building with large wings stretching out on two
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Fig. 0.2 The courtroom view from above the translators’ box. Rear: the spectators’ seats in the balcony (the crowded section on the left was reserved for Japanese citizens) and the press seats on the ground floor. Far left: the defendants’ dock. Far right: the judges’ bench. Center, rear to front: the defense table, the lectern, the prosecution table, and the witness box (facing the spectators). Courtesy National Archives, photo no. 238-FE.

sides was an ideal place for the historic trial to be held. In any event, few other structures with comparable capacities had survived the Allied air raids. The choice of the Ichigaya building also had the benefit of impressing the Japanese public with the fact of defeat and putting a symbolic end to the unquestioned authority of the Japanese military establishment.  

Once the site was decided upon, the large auditorium on the second floor of the building was converted into a courtroom; the remaining part underwent major renovations as well. By the time the trial commenced, the former war ministry building was stripped of the black paint that had given it a protective guise during war. The interior was significantly improved, too, thanks to new paint, furniture, carpets, tiles, and repairs. The rooms in the wings of the building were renovated so that they could be used as the offices of the prosecuting agency, defense counsel, court translators, stenographers, typists, and journalists. Some other rooms were used as the documents office, the printing
office, the chamber of the tribunal, the secretariat of the tribunal, and other miscellaneous offices and small shops including the barber, laundry, and kiosk that catered to daily needs of the trial participants.9

One important yet often underappreciated spatial feature of the court was its location in the capital city. The physical immediacy of the court was essential for the trial to achieve its educational function, that is, to give history lessons to the Japanese public. Had the tribunal been set up in a faraway land, say, in China, the United States, or even The Hague, it would have created immense logistical difficulties—not to mention financial obstacles—for the Japanese press to report regularly and for ordinary Japanese people to observe the actual proceedings in person. The closeness of the courtroom guaranteed that any interested individuals could have easy access to this historic trial and appreciate its fact-finding mission. While the public enthusiasm was not constant, Japanese journalists and certain dedicated individuals frequented the court (Fig. 0.3). Those who were less committed, too, returned when they learned that high-profile witnesses—such as the former prime minister, Tōjō Hideki—were about to testify.10

The Tokyo trial had a multinational judge panel and an international prosecuting agency, following the Nuremberg model. Even defense counsel at Tokyo had an “international” appearance, because the United States government supplied some 20 American lawyers as assistance (Fig. 0.4). Their participation helped mitigate some of the basic difficulties that the Japanese defense lawyers faced in court, such as the latter’s lack of fluency in English and unfamiliarity with the Anglo-American adversarial system. To a certain degree, the presence of American lawyers also gave the Tokyo trial the appearance of fairness to trial observers. That said, the limited number of American attorneys posed constant challenges to the defense team to prepare its case expeditiously.11

The following eleven countries sent judges and prosecutors to the Tokyo trial: Australia, Britain, Canada, China (the Republic of China), France, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, and the United States. Of the eleven countries, Britain, China, the Soviet Union, and the United States jointly had secured Japan’s unconditional surrender after the Potsdam Declaration on July 26, 1945.12 Three British dominions—Australia, Canada, and New Zealand—were not
Fig. 0.3 Japanese spectators, searched for concealed weapons and cameras at the entrance of the war ministry building, July 23, 1946. Courtesy National Archives, photo no. 238-FE.

Fig. 0.4 Some of the Japanese and American defense lawyers at the defense table in the courtroom. Mentioned in this book are Capt. Alfred Brooks, third from left, and William Logan, to his right. Courtesy National Archives, photo no. 238-FE.
party to the Potsdam Declaration, but had been the major military allies of the British and American forces during World War II in both the European and Pacific theaters. France and the Netherlands joined the Allied war effort, too, as their colonies in the Pacific region had faced Japanese invasion and occupation. India and the Philippines had been subject nations of Britain and the United States during war, but won independence in 1947 and 1946 respectively. Like the British dominions, they, too, had made huge military contributions to the Allied war effort against the Axis powers.

The participation of a large number of countries had two far-reaching consequences. First, maintaining unity among the multinational participants became a major problem. This challenge had been present at Nuremberg, where as many as four countries participated (Britain, France, the Soviet Union, and the United States). With seven additional countries, the Allied representatives were bound to have far greater difficulty coordinating work among themselves. As subsequent chapters will show, the tendency toward division often led to miscommunications among the lead prosecutors and complicated the preparation of their cases. The panel of judges was not so successful in nurturing the spirit of unity and mutual respect, either, as reflected in the split judgments between the majority opinion of eight judges, two separate concurring opinions, and three separate dissenting opinions. This outcome stands in sharp contrast with the result of the Nuremberg trial, where the international judges overcame their differences and delivered a unanimous judgment.\textsuperscript{13}

Second, the inclusion of a number of lesser powers gave the Tokyo trial an appearance of what one might call a “victims’ trial” of the former victimizer (that is, Japan) as opposed to a victors’ trial of the vanquished nation.\textsuperscript{14} The participation of the Philippines is a case in point. The Philippines was among the victor nations, but its actual war experience was less than victorious. The war memories of most Philippine civilians were of Japanese invasion, atrocities, and war devastation, although this is not to discount the memory of armed resistance led by Filipino guerrilla forces. The same applies to Burma and Indonesia. These nations were not formal participants in the Allied war crimes program, but one assistant from each country joined the Allied prosecution team to help prepare evidentiary material.\textsuperscript{15} For these nations,
the Tokyo trial served as an opportunity to voice publicly their grievances against the former victimizer in the international arena.

The participation of these Asian countries also made the Tokyo trial as much a multiracial as a multinational event, although such a characterization is rarely made in existing historical literature. As a matter of fact, the Tokyo trial has faced charges of racial and colonial bias in recent years for the reason that the Allied powers failed to include Korea and Taiwan in the prosecutorial effort even though these two former Japanese colonies had been victims of the war. This kind of criticism deserves serious consideration, especially because this single issue has come to define the way in which historians today determine the success or failure of the Tokyo trial. As critics point out, it is an indisputable fact that the wartime Japanese government used a large number of Taiwanese and Korean people in the war effort. Government policy included enlisting young Korean and Taiwanese men in the Japanese armed forces, thereby making them unwilling participants in actual combat against the Allied soldiers. When the war was over, the Allied powers put an end to decades of colonial injustice by freeing Korea and Taiwan from Japanese rule as had been promised in the Cairo Declaration (1943) and the Potsdam Declaration (1945), and subsequently affirmed by the San Francisco Peace Treaty (1951). At the same time, however, they proceeded also to prosecute a certain number of Korean and Taiwanese prisoners of war (148 and 173 respectively), primarily for charges that they committed war crimes against Allied prisoners held at POW camps. These two contrasting postwar measures indicate that the Allied powers regarded Korea and Taiwan not only as victims of Japanese colonialism but also as victimizers who had assisted Japan’s aggression and atrocities. There is considerable irony in the double historical victimhood of these two former Japanese colonies. The tragic fact, however, is that the Tokyo trial, being a war crimes trial, was ill-equipped to deal with problems associated with Japanese colonialism.

That said, it is legitimate to ask whether there was any legal recourse for addressing certain forms of egregious wartime violence that the Japanese government committed against its colonial subjects. The use of Korean and Taiwanese women for the comfort women system is a case in point. One could argue that the concept of crimes against humanity could have been used to prosecute this type of systematic
atrocity against women from Japanese colonies. As history shows, Allied prosecutors did not explore this possibility and ultimately failed to hold Japanese leaders accountable for organized sexual slavery. This unfortunate omission can validly be considered as one major historical shortcoming of the Tokyo trial. The plight of Korean and Taiwanese women came under rigorous judicial scrutiny only many decades later. In the 1990s, the International Commission of Jurists and the Economic and Social Council of the United Nations conducted inquiries into the comfort women system and established that sexual enslavement of Korean and Taiwanese women constituted a crime against humanity. (As will be discussed in Chapter 7, however, the Allied prosecutors did present evidence of military sexual slavery targeted at women of enemy nationalities, such as Chinese, Dutch, Indonesian, and Vietnamese women.)

An Australian justice, Sir William F. Webb (Fig. 0.5), was the presiding judge at the Tokyo Tribunal. The chief justice of the Supreme Court of Queensland, Australia, Webb was one of the few jurists with extensive experience on matters related to war crimes in the Pacific region in those years. He had served three times as a war crimes investigator for the Australian government between 1943 and 1945. During his first appointment, from July 1943 through March 1944, he conducted large-scale inquiries singlehandedly, tracking down and interviewing 471 witnesses in Australia and in the New Guinea area. His investigations resulted in a 452-page report, accompanied by 100 exhibits, documenting the atrocities committed by the Japanese armed forces against Australian and American service personnel, missionaries, and other civilian populations in the South Pacific following the Japanese invasion in January 1942. Having achieved a reputation as a competent war crimes investigator, he was appointed to lead another war crimes commission in 1944, and again in 1945, immediately after Japan’s surrender. The Australian government requested his service as a judge for the new international court at Tokyo in view of these recent achievements.

The defense took issue with Webb’s prior experience in war crimes investigations as soon as the trial began. It argued that he must have already formed opinions prejudicial to the accused, and that he should
therefore be disqualified. His fellow judges rejected the defense motion, however, on grounds that the Tribunal had no authority to make any change to Webb’s appointment. Webb, for his part, had initially considered it prudent not to accept the nomination, but he decided to accept his government’s request in the end by reasoning that his previous work did not presuppose cases against those specific individuals who were later put on trial at Tokyo.  

Incidentally, a similar situation arose at the United Nations–backed war crimes court in Sierra Leone in 2004. Defense counsel in this case argued that the president of the court, Geoffrey Robertson, should be disqualified because of his prior involvement in war crimes investigations. The defense pointed out especially that Robertson—Queen’s Counsel and also a leading British human rights lawyer—had written in his book, *Crimes against Humanity: The Struggle for Global Justice*, that the rebels, including one of the accused, committed “grotesque crimes against humanity” during the civil war. This could be interpreted as his already holding an opinion prejudicial to the three commanders of the rebel group—the Revolutionary United Front (RUF)—who were on
The Appeals Chamber, in reply, ruled in favor of the defense. But it went on to rule that Robertson would remain in the appeals chamber of the Special Court, where he would have the power to hear other, non-RUF cases. This ruling is harsher than the one the Tokyo Tribunal handed down with respect to Webb’s appointment. Yet, the fact that Robertson was allowed to remain on the Special Court rather than ordered to recuse himself suggests that Webb’s continued service in the Tokyo Tribunal might not have been completely out of the norm under the practice of international courts in the past or the present.

Once in the courtroom, Webb proved to be a domineering judge, in contrast to others who sat quietly throughout the proceedings. As a matter of principle, only the president of the tribunal was entitled to speak in court on behalf of all judges. (The same principle applied at Nuremberg.) When he spoke, Webb was typically brusque and undiplomatic, or so he was perceived. Many contemporary observers including his fellow judges considered these qualities to be neither helpful nor likable. But his handling of problems arising from the court proceedings was often judicious, as a few examples of his judgeship will show in subsequent chapters.

As for the ten other justices, all had previously held various prominent positions in their home countries as judges, law professors, or legal advisers. But few had such extensive experience in war crimes investigations as Webb did. Two exceptions would be Maj. Gen. Myron C. Cramer, the member from the United States, and Henri Bernard, the member from France. Cramer was the former U.S. judge advocate general and had taken part in planning the German war crimes trials. Toward the end of the Tokyo trial, he served as chairman of the committee that drafted the majority opinion. Prior to joining the Tokyo Tribunal, Bernard had been a prosecutor on various courts that tried Nazi war criminals and collaborators. He wrote a separate dissenting opinion at the conclusion of the Tokyo trial, a section of which will be discussed later. Of the eleven judges, the appointment of the Philippine judge Delfin Jaranilla may have been problematic in that he had been a prisoner of war and a survivor of the Bataan Death March. This alone could—and probably should—have called into question his qualifications to serve on the Tokyo Tribunal. The fact that Jaranilla
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Fig. 0.6 The eleven justices. Seated, left to right: Lord Patrick (Britain); Myron C. Cramer (U.S.A.); William F. Webb (Australia); Mei Ju-ao (China); and I. M. Zaryanov (U.S.S.R.). Standing, left to right: Radhabinod Pal (India); B. V. A. Röling (Netherlands); E. S. McDougall (Canada); Henri Bernard (France); E. H. Northcroft (New Zealand); and Delfín Jaranilla (Philippines). Courtesy National Archives, photo no. 238-FE.

recommended much harsher verdicts and sentences than did his fellow judges strengthens doubts about his impartiality. (His recommendations, recorded in a separate opinion, were not reflected in the judgment of the Tokyo Tribunal.) The justice representing India, Radhabinod Pal, was also a controversial appointment, although for an entirely different reason. Problems associated with his judgeship are very complex and will be treated separately in Chapter 9.

Holding an international criminal trial is commonplace today, but it was a novelty 60 years ago. The only relevant precedents before the Tokyo trial were the contemporaneous legal proceedings at Nuremberg. This meant that all judges, including Justice Webb, had to improvise in order to tackle new challenges and make the whole process work. As they soon found out, numerous difficulties awaited them that they had never before encountered in domestic courts. First of all, they had to become acquainted with an unfamiliar city, courtroom, and members of the prosecution and the defense. Most defense lawyers and their clients did not speak English, and their arguments had to be heard through interpreters. Once the trial began, the judges had to set out new rules
in response to various disputes that arose from unique circumstances of the trial. Major problems included the difficulty of simultaneous translation, the adequate reproduction and distribution of court exhibits for everyone, and the determination of rules regarding the examination of witnesses and the admissibility of evidence. The judges had to do their best to strike the right balance between the need to guarantee the two parties equal opportunity to present their cases on the one hand, and the need to ensure an expeditious trial on the other. Fulfilling both needs was never easy. Finally, the judges had to analyze on a timely basis thousands of admitted court exhibits and more than 48,000 pages of trial transcripts before reaching their judgments.

The prosecuting agency at Tokyo was formally known as the International Prosecution Section (Fig. 0.7). It was made up initially of a group of 39 American lawyers, stenographers, and clerical staff. It then grew into a multinational force of around 500 at its high point. The original group of 39 arrived in Tokyo in early December of 1945, set up their offices in Meiji Building in Tokyo, and began preliminary investigations while awaiting the arrival of the prosecutors from other participating countries. The leader of the American prosecution team was Joseph B. Keenan, a former assistant to the U.S. attorney general and director of the Criminal Division of the Justice Department. President Harry S. Truman appointed him by executive order in November 1945. The American team was soon internationalized as prosecutors from other countries began to arrive two months later. For the most part, each of the Allied prosecution teams consisted of one lead prosecutor and a small number of assistants. The prosecutors from Canada, New Zealand, and the Philippines seem to have come alone, without any accompanying staff.

The arrival of the Allied prosecutors immediately changed the work dynamic of the prosecuting agency even though they brought in much smaller work forces than the American team had. This was because the Allied prosecutors, especially those from Britain and the British dominions, began taking the lead in order to speed up preparation of the indictment. Arthur S. Comyns-Carr, King’s Counsel from Britain, and Justice Alan J. Mansfield, a Supreme Court judge of Queensland and former assistant to Webb’s third war crimes commission, emerged
as the de facto leaders of the International Prosecution Section. The American lead prosecutor lost his prominence as a result (although he tried to maintain his leadership position). Under the guidance of Comyns-Carr and Mansfield, the International Prosecution Section quickly wrapped up investigations, determined the prospective defendants, and completed the final draft of the indictment. The lead prosecutors from eleven countries continued to share the burden of the prosecutorial effort for the rest of the court proceedings.

With the background information in place, we are now ready to begin our historical investigation of the Tokyo trial.