

Rethinking Justice? Decolonization, Cold War, and Asian War Crimes Trials after 1945

Veranstalter: Cluster of Excellence „Asia and Europe in a Global Context“, Heidelberg University

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The War Crimes Trials which took place in Asia in the aftermath of the Second World War can be understood as sites where new ideologies of international law were constructed in the mid-twentieth century. The crisis faced by old European empires in the aftermath of the Japanese challenge and the rise of anti-colonial movements which erupted across much of the region in the mid-1940s and 1950s provided the political context for these trials, which have hitherto been neglected in great part. The onset of the Cold War was yet another key factor in shaping power relations and expectations about international justice that affected all political actors. A conference at Heidelberg University assembled 24 participants from 12 countries to discuss this emerging field of research and present fresh research results.¹

The conference started with an evening panel. KERSTIN VON LINGEN (Heidelberg), principal organizer of the conference and leader of the Research Group ‘Transcultural Justice’ at Heidelberg University’s Cluster of excellence „Asia and Europe in a Global Context“, gave an introductory speech in which she highlighted how war crimes trials in Asia offered a crucial legal, political, and moral-ideological watershed through which some of the initial contestations of decolonization and the Cold War were played out. She argued that the trials should not be seen in isolation, but as part of these broader global political transformations, and also as an integral stage in the emergence of new universalistic norms of international humanitarian law. FABIAN KLOSE (Mainz) from the Leibniz Institute of European History at Mainz University suggested that in spite of the emergence of these

new norms, the traditional colonial powers (he took the specific examples of Britain and France) were reluctant to accept these standards, since their acceptance would have restricted their potential to use violent force to maintain domination in their colonies in Africa and Asia.

The second day started with a morning session on the International Military Tribunal for the Far East at Tokyo, chaired by ANNETTE WEINKE (Jena). BARAK KUSHNER (Cambridge) presented the first paper, arguing that Japanese ideas of justice had developed independently from and prior to the Tokyo trial and not in reaction to it, as often assumed. NEIL BOISTER (Hamilton, New Zealand) of Waikato University then focused on the issue of opium trade as a war crime at the Tokyo trial, its importance for the Republic of China and for the United States, its relevance within the colonial context, and the beginning of norm setting as well as a system of international drug control. The next speaker, BEATRICE TREFALT (Melbourne) of Monash University demonstrated how France used the trial as an opportunity to reframe the history of Indo-China during the war years. MILINDA BANERJEE (Kolkata) of Presidency University, Kolkata, shed light on the position of the Indian Judge Radhabinod Pal towards concepts of sovereignty and natural law, and offered a new way of understanding the famous dissenting judgment he delivered at Tokyo within the broader context of shifting intellectual and foreign policy perspectives in India.

The afternoon session, chaired by FRANZISKA SERAPHIM (Boston) of Boston College, opened a series of fascinating case studies on the war crimes trials program (called class B/C trials) from different countries in Asia, starting with perspectives on Korea. The first paper presented by DEOKHYO CHOI (Cambridge) explained the ways in which questions of war crimes, the issue of collaboration and war reparations were debated in Korea. SANDRA WILSON (Perth) of Murdoch University discussed the experience of Korean nationals as defendants

¹ For details, see conference the webpage: <www.asia-europe.uni-heidelberg.de/en/rethinking-justice> (25.1.2015).

in war crimes proceedings in Asia. DEAN ASZKIELOWICZ (Perth), also from Murdoch University, examined another perspective and presented the Australian government's policy towards war crimes suspects of Korean and Taiwanese descent. The lively discussion which followed focused on the culpability of Koreans in war crimes and the extent to which the Allied Powers took the category of colonialism (of Japan in Korea) into account when dealing with the accused.

Continuing with the theme of case studies, the third conference day started with a morning panel on British trials in South-East Asia, chaired by WOLFGANG FORM (Marburg) of the International Centre for the Research and Documentation of War Crime Trials (ICWC). WUI-LING CHEAH (Singapore) examined how the post-WWII trials conducted by the British military in Singapore dealt with oaths of allegiance. KIRSTEN SELLARS (Hong Kong) of the Chinese University of Hong Kong demonstrated how the Red Fort Trials in India challenged the premise of treason and established a legal critique of the supremacy of domestic security law and a new perspective on international law. After the break, YUMA TOTANI (Honolulu), University of Hawaii, presented a selection of British war crimes trials from the Andaman islands where former high-ranking members of the Japanese armed forces were prosecuted on charges of war crimes against civilians in the China-Burma-India (CBI) theatre. ROBERT CRIBB (Canberra) of Australian National University argued through an examination of the British trials of Japanese war criminals in Burma that the Allied war crime trial programme in Asia – which took place in the emerging Cold War struggle between communism and capitalism and the struggle over the future of empire – was driven more by considerations of justice than by mere political strategy in the context of decolonization.

The afternoon session, chaired by TANJA PENTER (Heidelberg), focused on some interesting case studies within the Cold War context and Sino-Soviet war crimes trials policy. KONRAD LAWSON (St Andrews) opened the session by comparing Communist and Nationalist traitor elimination work in 1945-1948. He argued that both the Nationalist

and the Communist parties operated extensive campaigns of „traitor elimination“ outside of the major cities after Japanese surrender, in which the process of retribution against betrayal in the past was not adequately distinguished from the threats of national betrayal in the present and future. Lawson also suggested that a clear-cut dichotomy cannot be maintained between formalized trials and informal or semi-formal popular retribution; often there were clear overlaps and flows between these categories (e.g. through use of legal manuals in popular retribution projects). The next speaker, ANJA BIHLER (Heidelberg), shed light on post-war Chinese war crimes trials on Taiwan. In her presentation, she emphasized that the trials in Taiwan took place under circumstances that differed significantly from those on the mainland. The war crimes trials against the Japanese were held at an extremely sensitive time when the Chinese were fighting for their own legitimacy as the new rulers on the island and had just used force against members of the civilian population.

VALENTYNA POLUNINA (Heidelberg) presented on the Soviet bacteriological warfare trial in Khabarovsk (1949). She argued that by establishing a so-called „hybrid“ show trial that combined truthful facts with elements of show trial and propaganda, Soviet leaders tried to achieve a geopolitical and ideological goal in the emerging bipolar world – establishing good relationship with the new born People's Republic of China and opposing the growing influence of the USA in the Far East. In the following paper, ADAM CATHCART (Leeds) analysed the role of the Shenyang Trials of 1956 in configuring China's post-war position and asserting a specifically Chinese communist response to Japanese war crimes. He stressed that while the Khabarovsk Trials also exposed crimes committed in Manchuria with an emphasis on bacteriological weapons research, the Shenyang Trials held up Pu Yi, the puppet emperor, and various officials throughout the broader Manchukuo system to scrutiny. With the Shenyang Trials, the Chinese Communist Party (CCP) sought to move China beyond gratefulness for the Soviet intervention and on toward a more assertive portrayal of

Chinese CCP justice. They also exemplified how the government used show trials in the 1950s to undergird public support, serve as instruments of propaganda internationally, and frame a model of Japanese postcolonial guilt.

During discussions following the presentations, the participants pointed out that there might be more differences between the approaches to war crimes trials in the Soviet Union and the People's Republic of China in the post-war period as it has been asserted so far. Moreover, it was emphasized that the context of the Cold War and the different courses of decolonization in different parts of Asia had a crucial impact on war crimes trial policies of the authorities which replaced the former Japanese Empire.

The fourth and last conference day began with a morning panel on Dutch war crimes trials in Indonesia, chaired by PETER ROMIJN (Amsterdam) of Amsterdam University and director of the Institute for War, Holocaust and Genocide Studies (NIOD). The first paper was presented by LISETTE SCHOUTEN (Heidelberg) who argued that the Dutch trials in Indonesia were part of the Dutch political-legal attempt to restore their control over the colony. She offered detailed quantitative evidence to explain how Japanese political-economic structures were taken into account while delivering the judgments. ESTHER ZWINKELS (Leiden) presented on the collaborator trials in the Netherlands East Indies, suggesting that the creation of different categories and definitions of 'collaboration' were part of a pragmatic Dutch effort to restore colonial order. The Dutch decision not to punish Indonesian nationalists like Sukarno who had politically collaborated with the Japanese, demonstrates how the trials were integral to the process of politically negotiating with the trajectory of decolonization.

The final discussion was again very lively, with inputs by Kerstin von Lingen and Barak Kushner, followed by an open debate. Some of the main issues raised by various participants included the question whether the war crimes trials in Asia constituted a deliberate attempt by the old powers to re-impose colonialism, or whether such a policy was subordinate to considerations of higher justice. To

what extent was the Tokyo Trial central to the trials policy, or were the B/C trials equally important but have been unjustly neglected in later public and scholarly discussions? To what extent were the trials 'Western', in terms of composition of judges and the nature of legality involved, or whether they created some sort of supra-Western universalistic standard? It would also be important to scrutinize the immediate and long-term legacies of the trials in the changing self-image of the individual participants in the trials as well as of the nations involved. The participants agreed on the need to start a long-term cooperation about these questions, and convened until a follow-up conference.

Conference Overview:

Kerstin von Lingen (Heidelberg), Coming to Terms with War Crimes in Asia in the Wake of Decolonization and Cold War Politics – Introduction

Fabian Klose (Mainz), End of Empire and International Humanitarian Law

Discussion

Peter Comba (Heidelberg), Welcome

Session 2: Tokyo and its Legacies on Decolonization

Chair: Annette Weinke (Jena)

Barak Kushner (Cambridge), Decolonization and the Search for Justice in the Imperial Aftermath: Japanese Discussions About the Actual Pursuit of Justice

Neil Boister (Hamilton, New Zealand), Colonialism, Anti-Colonialism and Neo-Colonialism in China: The Opium Question at the Tokyo War Crimes Tribunal

Discussion

Beatrice Trefalt (Melbourne), The French Prosecution of Japanese War Crimes at the International Military Tribunal for the Far East: Reframing the History of the Japanese Occupation of Indochina

Milinda Banerjee (Kolkata), Can Sovereignty be Decolonized? Judge Radhabinod Pal's Dissenting Judgment at Tokyo from a Perspective of Global Intellectual History

Discussion

Session 3: Case studies from East Asia: Korea
Chair: Franziska Seraphim (Boston)

Deokhyo Choi (Cambridge), Defining Colonial „War Crimes“: Korean Debates on Collaboration, War Reparations, and the International Military Tribunal for the Far East

Sandra Wilson (Perth), Korea and Koreans in the Asian War Crimes Trials

Dean Aszkielowicz (Perth), The Australian Government's Pursuit of Korean and Formosan 'Japanese' War Criminals

Discussion

Session 4: Case studies from South and South-East Asia: British War Crimes Trials at Singapore, Burma and in India

Chair: Wolfgang Form (Marburg)

Wui-Ling Cheah (Singapore), The British Military's Prosecution of Japanese War Crimes in Colonial Singapore: A Historical and Socio-Legal Study

Kirsten Sellars (Hong Kong), Another Meaning of Treason: The Red Fort Trials and Their Legal Legacy

Discussion

Yuma Totani (Honolulu), The Japanese Crimes against Civilians in the China-Burma-India Theatre: Case Studies from the UK War Crimes Proceedings

Robert Cribb (Canberra), Forgotten Prisoners: Japanese War Criminals in Rangoon Jail, 1946-1951

Discussion

Session 5: Case studies: Anti-Imperial Justice? The Cold War Context and the Sino-Soviet war Crimes trials policy

Chair: Tanja Pentter (Heidelberg)

Konrad Lawson (St Andrews), Retribution and Civil War: Communist and Nationalist Traitor Elimination Work 1945-1948

Anja Bihler (Heidelberg), The Question of Legitimacy – Chinese War Crimes Trials on Taiwan

Discussion

Valentyna Polunina (Heidelberg), Belated Justice: Soviet War Crimes Trials Policy on Bacteriological Warfare – the Case of Khabarovsk Trial (1949)

Adam Cathcart (Leeds), The Shenyang Trials of 1956: The Resurrection of Defeat

Discussion

Session 6: Case Studies from South-East Asia: Dutch Trials in Indonesia Chair: Peter Romijn (Amsterdam)

Lisette Schouten (Heidelberg), The Price of Justice? Dutch East Indies' War Crimes Trials in the Face of Decolonization

Esther Zwinkels (Leiden), Puppets, Profiteers and Traitors. Collaborator Trials in the Netherlands Indies 1945-49

Discussion

Concluding Debate

Chair: Kerstin von Lingen (Heidelberg) / Barak Kushner (Cambridge)

Decolonization and Cold War as Determining Factors in War Crimes Trials Policy in Asia

Tagungsbericht *Rethinking Justice? Decolonization, Cold War, and Asian War Crimes Trials after 1945*. 26.10.2014–29.10.2014, Heidelberg, in: H-Soz-Kult 31.01.2015.