

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

**INTERNATIONAL CONFERENCE ON THE 60TH ANNIVERSARY OF TOKYO TRIALS,
MOSCOW – NOVEMBER 27, 2008**

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I greet you on behalf of the International Association of Democratic Lawyers and on behalf of its member from over a hundred countries.

We meet to-day to observe the 60th Anniversary of the “International Military Tribunal for the Far East” which is commonly referred to as “Tokyo War Crimes Tribunal” or “Tokyo Trials” because Tokyo being its venue. We also observe the Anniversary of the Khabarousk Trial which was held in December, 1949. It is of importance to note that this year is also the 60th Anniversary of the Universal Declaration of Human Rights which forms the basis of practically all activities for promotion of human rights. We in the International Association of Democratic Lawyers have a special bond as our first President, Mr. Rene Cassin was one of the authors of the Declaration.

I must congratulate our friends from Russia for the initiative they have taken in organising this important International Conference on “the problems of the contemporary international legality and the lessons of Tokyo and Kharbarousk Trials.”

As the Second World War was coming to an end the Allied powers starting grappling with the question of how to deal with and appropriately punish those who brought this holocaust causing unprecedented misery, havoc and disaster on the peoples of the World.

After the signing of the Instrument of Surrender of Germany, the London Charter of August 8, 1945 provided the legal basis for **“punishment of major war crimes of the European Axis Countries”**. Nuremberg War Crimes Tribunal was constituted thereafter for trial of prominent leadership of Nazi Germany. The Nuremberg Trials resulted in the Nuremberg Principles of 1950 which has made significant and positive contribution to the development of international law.

However the Tokyo Trials have a different history. The Charter of the International Military Tribunal for Far East was proclaimed by Gen. Douglas MacArthur as the Supreme Commander of the Allied

Forces with the objective **“to try leaders of the Empire of Japan.”** The 1st and the major trial of some of such leaders was held at Tokyo between May 1946 and Nov. 1948.

There are serious reservations about the Tokyo Trials. I consider it as a Tribunal flawed since its inception. Firstly while the Tribunal was conceived to try leaders of the Empire of Japan but neither Emperor Hirohito nor the other members of the imperial family were prosecuted. In fact the historical evidence indicates that General MacArthur and the United States took all steps to protect Emperor Hirohito for the role he had played during and at the end of the War. There are clear indications that US allowed prominent Japanese accused to co-ordinate their stories in such a manner that the Emperor may be exonerated and be spared from any indictment. In fact critics go to the extent of commenting that, **“the (Tokyo) trial was essentially a legal procedure to exonerate the imperial family from criminal responsibility.”** Some critics have even gone further to the extent of saying that **“with the full support of MacArthur’s headquarters, the prosecution functioned, in effect, as a defence team for the Emperor.”**

It is a matter of great significance that 3 Judges of the Tokyo Tribunal wrote about the criminal responsibility of Emperor Hirohito.

It is essential to notice that at the end of World War-II, General Mac Arthur was busy in keeping the Emperor Hirohito and other members of the imperial family out of the net of War Criminals closing around them so that the Emperor may not have to abdicate and could be used as a tool of United States in the post-war Japan. Preserving the emperor system became essential for US as it held the view that the occupation and governance of Japan would be easier with the Emperor at the Centre. Both the US and Japanese ruling circles were accomplice in saving the then existing emperor - centric system and in granting immunity to the Emperor. In fact the subsequent role of Japan as being wholly subservient to the United States was a direct consequence of this policy.

Secondly, the scientists of the Japanese Army Unit 731 who had carried out experiments on biological weapons and germ warfare open air tests on civilians, were deliberately not brought for trial before the Tokyo Tribunal. It is an established fact that those officials and

physicians who surrendered to the Americans, were never brought to trial as Gen. Douglas MacArthur secretly granted immunity to the scientists and physicians of Unit 731 in exchange of they providing Americans with their research on biological weapons and its results.

When the Bulletin of Atomic Scientists in 1981 published an Article detailing these experiments on civilian population, Judge Roling [then last surviving member of the Tokyo Tribunal from Netherlands] remarked:-

“As one of the judges in the International Military Tribunal, it is a bitter experience for me to be informed now that centrally ordered Japanese War Criminality of the most disgusting kind was kept secret from the Court by the US Government.”

The important evidence was thus withheld from the Tribunal and the perpetrators, though known were never brought to trial. These War criminals escaped trial and the world was deprived of important data, material and results of research on biological weapons and its disastrous consequences.

It is here that the Khabarousk War Crimes Trials in December, 1949 assumes great significance. 12 members of the Japanese Kwantung Army were tried as War Criminals for manufacturing and using biological weapons during World War-II. All the 12 accused were found guilty. They were sentenced to terms ranging between 2-25 years in labour camps. However all the 12 guilty officers were repatriated to Japan in 1956.

Thirdly, an important issue raised then and relevant even today is the responsibility of US and other western colonial powers for exploding atom bombs on Hiroshmi and Nagasaki on August 6 and 9, 1946. The dropping of these atom bombs was wholly unnecessary and served no military purpose except for US to test the potential of these new weapons as the World War-II was practically over. Japan was ready to surrender and the Emperor was vacillating to do so only in an effort to save himself. This vacillation and the attempt to save Emperor Hirohito cost Japan the loss of 200,000 of its innocent people instantly and 100,000 hibakushas have died subsequently. The US military and

airforce officials and those in power were responsible for causing the avoidable deaths. They were not put on trial.

One of the judges of Tokyo Tribunal Judge Radhabinod Pal from India in his dissenting judgment specifically raised this issue. He wrote in his judgment that the exclusion of Western colonialism and the use of the atom bomb by US from the list of crimes signified **“the failure of the Tribunal to provide any thing other than the opportunity for the victors to retaliate.”**

It is very significant that in an attempt to save Emperor Hirohito, US and Japan had to agree to incorporate Article 9 in the post war Japanese Constitution. While Emperor Hirohito and the Imperial family escaped being tried as War criminals but due to pressure from the the Allied Powers and the international public opinion Japan had to renounce war for ever.

Article 9 is a glorious declaration of permanent peace by Japan when it prescribes that “the Japanese people forever renounce war as a sovereign right of the Nation” and further “renounces was or the threat or use of force as a means of settling international disputes. To

accomplish this aim, the Army, Navy and Air Force and other war potentials will never be maintained.”

Article 9 was necessary to assure the World, and more particularly its Asian neighbours, that they need not worry about the repeated aggressions committed by Japan in the preceding period of over 70 years. The assurance was clear that you and your successive generations need not fear as Japan has renounced war forever and shall never raise any armed forces. Despite its past history, Japan made the solemn declaration of peace for posterity.

The message of Article 9 is also the message of the Charter of the United Nations. The Charter declares that the purpose of the United Nations is to save the coming generation from the scourge of war. This was adopted in the back ground of World War-II. Article 9 has only followed the lead given by the United Nations Charter and has carried it further to ensure peace.

Today Article 9 is essential to abolish war, for the World to banish war, for all times to come. War is a crime against Humanity and must not be allowed to happen because we want basic Human Right-

the Right to Life to be protected. It can be done only by every country having Article 9 in their Constitution.

Two countries of Latin America, Costa Rico and Panama followed Japan, but not completely. The provisions in these Constitutions are somewhat similar, but do not go far enough. Moreover, what is heartening is the declaration of Mr. Evo Morales, the President of Bolivia to have an identical clause of renunciation of war in the new Constitution of Bolivia.

The present US administration, which is on its last legs, has been pressurising the ever willing Japanese ruling circles to delete or amend Article 9. The call came from Richard Armitage a senior officer of the United States Administration. But why ? Not for the benefit of the Japanese people. The call to amend the Japanese Constitution at was made to benefit and assist the United States in its so-called "War on terror" and its chase for non-existent weapons of mass destruction. The people of Japan are against any such move. In August 2008 our friends from Japan organised an international Article 9 Conference Tokyo and Osaka. It was a massive display of support to the demand that to abolish

war one has to struggle for provisions like Article 9 in every Constitution of the world. They deserve our full support and cooperation in this task.

Let us hope that under the new administration of President -elect Boarak Obama such ill advised move to get Article 9 amended will be given up.

Two other important developments have taken place since the War Crimes Tribunals of World War-II one is the creation of the International Criminal Court at The Hague. It is a permanent mechanism and not an ad-hoc tribunal. Most of the crimes under its jurisdiction have been defined and its application is not retrospective but prospective. Its reach is international and can entertain cases whenever violations occurs any where in the world.

However let it not be assumed that with the establishment of ICC everything is fine. It is unfortunate that even after the Nuremberg Principles have been recognised as part of international law the crime of aggression continues to be committed. The US and allied countries attack on Afghanistan and Iraq are gross acts of aggression and universally

condemned. The recent attacks inside Pakistan and Syria are fresh acts of aggression and violations of natural sovereignty of independent countries in the grab of 'war on terror'. Moreover the impunity agreement signed by US with almost a hundred countries which have agreed not to hand over US citizens to ICC has weakened the scope of the jurisdiction of ICC. The ICC, mainly due to the very negative attitude of US has not been able to be as effective as we would have wished it to be. The second development in law is the recognition and exercise of "Universal Jurisdiction" to bring to justice under national laws those responsible for conduct amounting to crimes under international law. Universal Jurisdiction is a legal instrument for all those who seek justice on behalf of victims of actions amounting to war crimes. The case of General Pinochet is common knowledge. Lately large number of cases have been filed in the Courts in various countries by the victims of Israeli military action and against US for its various criminal actions in Iraq. Steps are being taken by and on behalf of those who have been and are still victims of crimes in Guantanamo Base and

Abu Gharib and other prisons against perpetration of war crimes. Recently a case has been launched under Universal Jurisdiction in Spain against seven foreign senior officers of the Israeli Military who are suspected of having committed war crimes in Gaza strip in the year 2000. It is an increasing assertion of universal jurisdiction in countries after countries. The law on this subject is still in a developing stage but it is obvious that those who commit war crimes and crimes against humanity can not escape. It is essential to discuss the current state of universal jurisdiction from different international perspective. There is a great potential for expanding the horizon of universal jurisdiction so that more and more victims of war crimes are able to get justice.

Much more work, much more activism is necessary to uphold human rights, the most important of which is right to life and to punish those who are guilty of such heinous crimes.