

Opening Remarks

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I would like to show you this slide first. This is a scene from an international symposium held in Nuremberg, Germany, in May 2018—earlier this year. It shows one of today’s panelists, Dr. Viviane Dittrich, deputy director of the International Nuremberg Principles Academy, giving the closing remarks. The venue is the courtroom where the Nuremberg Trials were actually held, i.e., Courtroom 600 of the Nuremberg-Fürth Regional Court, and the symposium was hosted by the International Nuremberg Principles Academy. The theme of the symposium was “70 Years Later: The International Military Tribunal for the Far East.” It gathered over thirty experts, jurists, and historians from Germany and other countries around the world, including the United States of America, the United Kingdom, and China, to passionately discuss the International Military Tribunal for the Far East (the Tokyo Trial) over three days. From Japan, International Criminal Court (ICC) judge Kuniko Ozaki presented a lecture and the recently late Professor Yasuaki Ōnuma also sent a video message.

Our symposium today has a deep connection with the Nuremberg symposium. Professor Yuma Totani, who gave the keynote address there, and Professor David Cohen, who also gave a lecture, sent me an email to inquire whether “we couldn’t have a similar international symposium, even a small one, in Japan as well in conjunction with the 70th anniversary of the Tokyo Trial.” That was in June this year. The email also mentioned the names of Judge Liu Daqun of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia as the keynote speaker in Tokyo and Dr. Dittrich as a panelist.

Professor Cohen and Professor Totani are old friends of mine, and I immediately understood the intention behind their proposal. I therefore consulted the Center for German and European Studies, University of Tokyo, obtained the cooperation and support of the Deutsche Akademischer Austauschdienst (DAAD) and the German Federal Foreign Office, and, given that

we would be hosting the event in Japan, asked the most distinguished Japanese researchers in this field, Professor Kensuke Shiba and Professor Hirofumi Hayashi, to grace the stage, which is how today’s symposium was realized.

The Nuremberg Trials and the Tokyo Trial are sometimes said to be “like twins,” and today’s symposium and the Nuremberg symposium also have a similar relationship.

The Nuremberg Trials have long been challenged as “winners’ justice,” even in Germany. “Aren’t crimes against peace and crimes against humanity *ex post facto* law or laws with retroactive effect?,” “If you are trying Germany for crimes against peace, why not investigate the Soviet Union’s crimes in invading Poland with Germany when World War II began?,” “Isn’t justice being forced upon the parties by power rather than law?” These kinds of criticisms have been raised.

The post-war government of West Germany did not accept the Nuremberg Trials, which were the first international criminal trials in history. The Japanese government accepted the Tokyo Trial and achieved independence, but this is different. When trying the Nazi accused in domestic trials, they did not try to incorporate “crimes against humanity” into their own domestic law and chose the path of trying them under conventional German criminal law.

Germany, which has addressed its “negative past” from the Nazi era with sincerity, was critical for a long time of the Allies’ trials of war criminals and did not alter its suspicious stance regarding international criminal law and international criminal justice. However, the time would come when that situation would greatly change.

The German government recognized the active meaning of international criminal justice and changed course towards encouraging its development in the 1990s, once East and West Germany had reunified and the Cold War had concluded. Germany

at this time considered the question of how to try state crimes of the collapsed former East Germany and the question of whether German courts could try the perpetrators of serious crimes performed during the war in the former Yugoslavia, but these debates led to wider recognition of the significance of international criminal law.

The contributions made by Germany towards the adoption of the Rome Statute in 1998 and the launch of the International Criminal Court (ICC) in 2002 have been described as truly significant. Behind these lies the continuation of pursuit—albeit insufficient—of Nazi criminals by the German judiciary to the point of abolishing the statute of limitations for premeditated murder. This then acted as one factor in recognizing that public norms were formed for facing one's negative past, which was inconceivable shortly after World War II, and encouraging the democratization and liberalization of German society. In addition, we can also point to the wide-ranging social trust in the judiciary.

The recent movement in Germany to recast the Nuremberg Trials as the starting point that led to the development of 21st-century international criminal justice and to reevaluate the historical and juridical significance of the Nuremberg Trials arose amid post-war Germany's political culture of facing up to its negative past. In 2010, an outstanding museum that presents the Nuremberg Trials and the subsequent development of international criminal justice was opened on the third floor of the building that houses Courtroom 600. It is funded by the German federal government, the state of Bavaria, and the city of Nuremberg. In 2014, the International Nuremberg Principles Academy was formed as a research and education center for international criminal justice.

On the other hand, what about Japan? Last week, I participated in a conference held in Tokyo on the Tokyo Trial, where we talked about the Ichigaya Memorial Hall, which preserves the trial courtroom. Even if visitors get all the application paperwork ready and are able to enter, there are very few displays about the trial and they cannot learn any details about the trial. The conclusion was that it is nothing compared to the Nuremberg museum.

It seems that contemporary Japan shows almost no tendency to look at the Tokyo Trial with the same gaze as contemporary Germany looks at the Nuremberg Trials. Why would that be? On the other hand, Japan became a signatory to the Rome Statute in 2007 and became the largest contributor to the ICC's budget in 2013, paying about 20%. The difference between these may also come up for debate in today's symposium.

Serious crimes—specifically, genocide, crimes against humanity, war crimes, and crimes of aggression—may be committed in the name of a state or an organization, but it is the individuals who commit the crimes that are held responsible for them. Even being a head of state, government leader, or other person in a public position will not excuse them from responsibility. We aim to put a stop to the “non-punitive culture” that has long continued throughout human history, halt crimes that are in progress, cause people plotting serious crimes to rethink, and establish the control of law. The Rome Statute, which presents this as its goal, has assumed the heritage of the Tokyo Trial and the Nuremberg Trials. I hope that today's symposium will also serve as a venue to discuss specifically what this heritage might be.