



Military Trials of War Criminals in the Netherlands East Indies 1946–1949

by Fred L. Borch.

New York: Oxford Univ. Press, 2017. Pp. xii, 255. ISBN 978-0-19-877716-8.

Review by Georgina Fitzpatrick, Melbourne (gjf@unimelb.edu.au)

When the Dutch colonial masters returned to the Netherlands East Indies (NEI) in 1946 after its Japanese occupation (Mar. 1942–Aug. 1945) and the postwar military administration by the British (and the Australians east of Lombok), they had much business to conduct on several fronts. In this book, the American military lawyer Fred Borch¹ concentrates on one of those fronts—the prosecution of Japanese for war crimes against both POWs and civilians in the NEI. Of the 448 war crimes trials held in twelve locations, he has chosen for discussion forty-four² as, evidently, “representative” (67; he never specifies in what way). His book is but the latest in a flood of new publications on a cross-section of trials held by seven wartime Allies in the Asia-Pacific region between 1945 and 1951.³ Some of these works are comparative in nature, others concentrate on the trials run by one particular ally based on meticulous research in relevant archives.⁴ Borch’s is the first extended English-language study of exclusively NEI trials; he has not, however, dug deeply into the archives, beyond some legal documents. Nor has he benefited from new research on trials elsewhere. This undercuts his representation of aspects of the NEI trials as “unique.”

For the historical background of his first two chapters, Borch relies on the work of Louis de Jong⁵ and the contributors to *The Encyclopedia of Indonesia in the Pacific War*.⁶ Chapter 1, “Setting the Stage,” outlines the Dutch colonial presence in the East Indies from 1595 until the surrender to the Japanese invading forces in 1942. Chapter 2, entitled “Asia for the Asians, *Bushido*, and Japanese War Crimes Tribunals in the NEI,” gives close attention to the prominent role of the Japanese military police of the Army (*kempeitai*) and Navy (*tokkeitai*) in committing war crimes.

1. He was the first Chief Prosecutor for the Military Commissions at Guantanamo Bay.

2. Listed in appendix A.

3. See, e.g., Kerstin von Lingen, ed., *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945–1956* (NY: Palgrave Macmillan, 2016); Kirsten Sellars, ed., *Trials for International Crimes in Asia* (NY: Cambridge U Pr, 2016); Sandra Wilson et al., *Japanese War Criminals: The Politics of Justice after the Second World War* (NY: Columbia U Pr, 2017); and Yuma Totani, *Justice in Asia and the Pacific Region: Allied War Crimes Prosecutions* (NY: Cambridge U Pr, 2015).

4. See, e.g., Suzanne Linton, ed., *Hong Kong’s War Crimes Trials* (NY: Oxford U Pr, 2013); Barak Krushner, *Men to Devils, Devils to Men: Japanese War Crimes and Chinese Justice* (Cambridge: Harvard U Pr, 2015); and Georgina Fitzpatrick, Tim McCormack, Narrelle Morris et al., *Australia’s War Crimes Trials 1945–51* (Leiden: Brill, 2016).

5. *The Collapse of a Colonial Society: The Dutch in Indonesia during the Second World War* (Leiden: KITLV Pr, 2002).

6. By Peter Post et al. (Leiden: Brill, 2010).

In chapter 3, “Prosecuting the Japanese,” the author explains how the NEI tribunals were set up and the legal bases (in 1945) for categorizing an offense as a “war crime.” He notes as well the changes made to Dutch domestic law in order to override existing prohibitions against such things as *ex post facto* laws. He details the decrees that formed the basis for the NEI trials, particularly Article 10 of Decree No. 45, which authorized prosecutions of groups charged with joint responsibility for a specific crime. He then sketches the configuration of the court (that is, a military court-martial presided over by three judges), the rules of evidence, and the review procedure. These subjects will instruct those interested in comparing different approaches to prosecuting war crimes. Chapter 4, “Preparing for Trial,” sets out problems in identifying suspects, gathering evidence, and choosing cases for trial. Much of this is familiar from previous studies of trials conducted by other Allies.

Chapters 5–10⁷ constitute the heart of the book. They are, Borch writes, “based almost exclusively on my analysis of the original war crimes tribunal judgments” (3) authored by the three judges in each trial. He also consulted written summaries of the proceedings of each case. Being fluent in Dutch,⁸ he was able to read the original legal sources, a boon for his Anglophone readers. He does not, however, appear to use any investigative or administrative files or correspondence related to the trials.

The author’s *modus operandi* here is to outline, case-by-case, the charges, witness statements, and final judgments, somewhat in the manner of an informal Law Report. He sometimes draws on a secondary source concerning a specific atrocity, but the recitation of the content of cases adds little to existing knowledge about Japanese war crimes in the Asia-Pacific and the ensuing trials.

Fortunately, some chapters go beyond mere summaries. In 7, Borch provides context by outlining the organized sexual slavery under Japanese occupation and noting the legacy of these trials for more recent prosecutions at International Courts. Chapter 10 provides some comparative context as well: Borch discusses the Yamashita case, an early, well known American trial conducted in Manila. He also describes some Australian cases for which brief Law Reports have been published⁹ and summarizes three NEI command responsibility cases tried in Batavia. It is of interest that one of the defendants was Gen. Hitoshi Imamura, who had already been tried at Rabaul in one of Australia’s command responsibility trials. The chapter concludes with extended observations on why three of the four men charged were acquitted (192–95). In general, chapter 10 is more analytical than the others and benefits from the author’s consideration of relevant trials elsewhere in the region.

As for Borch’s contention that the NEI trials were unique in several respects, he states in his introduction that

The Dutch ... tried war-related offenses that had not previously been prosecuted by any nation at any tribunal. Alone among the Allies conducting war crimes trials, the NEI authorities successfully prosecuted Japanese soldiers for the war crimes of forced prostitution. The Dutch also were the only Allied nation successfully to prosecute Japanese soldiers for the war crime of violating the terms

7. Namely, 5, “Trials for the Mistreatment of Civilians and Prisoners of War and Civilian Internees”; 6, “Trials for Mass Murder and Unlawful Executions”; 7, “Trials for Forced Prostitution”; 8, “Criminal Group Responsibility”; 9, “Trials for Violations of the Terms of the Armistice”; and 10, “Command Responsibility.”

8. Borch lived in the Netherlands for several years as a child.

9. In *UN War Crime Commission: Law Reports of Trials of War Criminals*, vols 1–16 (Richmond, UK: HMSO, 1947–49).

of the armistice after the cessation of hostilities in August 1945. Finally, NEI authorities were also unique in prosecuting “criminal groups” [*kempeitai* and *tokkeitai*] for war crimes. (1)

The first two assertions here are compelling, but the last, repeated elsewhere in the book, is dubious. In chapter 8, the author lays out his argument in greater detail, maintaining that Article 10 of Decree No. 45 meant that

if a temporary court-martial determined that the commission of war crimes was an integral part of the day-to-day operations of the group or organization ... then the personnel assigned to that organization were collectively responsible for war crimes committed as part of a criminal group. This meant that every individual member of the group was guilty of the war crime(s) for which the group had been found collectively responsible, with punishment dependent upon the level of individual culpability. (154)

Claims of “uniqueness” and “primacy” are always risky and Borch should have been aware of a similar approach in the British trials.¹⁰ Several Australian trials “evidencing grounds of joint participation in criminal enterprise” have been discussed in the scholarly literature,¹¹ including a case tried at Darwin in April 1946, several months *before* the Dutch trials began.

Other notable (and commendable) features of the book include its ancillaries. Among its twenty-five photographs, mostly of Japanese suspects, one shows a courtroom with judges and accused sitting face-to-face under a formal portrait of Queen Wilhelmina. The map program is mostly adequate¹² and appendix B helpfully lists officers named in the text sorted by location of their trials.

The overarching value of this book, especially for Anglophone readers lies in its forty-four trial summaries, which highlight cases relevant to specific types of crimes. The book might also serve as a primer on Dutch war crimes trial procedures, recruitment of personnel, provision of ancillary staff, etc., as well as enable comparative analysis of the Allied trials arising from the Pacific War. However, a large-scale study firmly based in the pertinent Dutch archives and treating all the trials held by the Dutch in the NEI still awaits its author.

10. Nina H.B. Jørgensen, “On Being ‘Concerned’ in a Crime: Embryonic Joint Criminal Enterprise?” in Suzanne Linton (note 4 above) 137–67.

11. See Gideon Boas and Lisa Lee, “Command Responsibility and Other Grounds of Criminal Responsibility,” in Georgina Fitzpatrick et al. (note 4 above) 168–72, on “historical cases of joint participation in criminal enterprise.”

12. Map 1, though its caption reads “Netherland East Indies 1942,” shows also the whole of the main island of New Guinea and most of Australia!