

BEFORE THE
MILITARY COMMISSION
convened by the
COMMANDING GENERAL,
United States Army Forces,
Western Pacific

UNITED STATES OF AMERICA)

-vs-)

TOMOYUKI YAMASHITA)
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PUBLIC TRIAL (FINDINGS)

High Commissioner's Residence,
Manila, P. I.
7 December 1945

Met, pursuant to adjournment, at 1400 hours.

MEMBERS OF MILITARY COMMISSION:

MAJOR GENERAL RUSSEL B. REYNOLDS, Presiding Officer
and Law Member
MAJOR GENERAL LEO DONOVAN
MAJOR GENERAL JAMES A. LESTER
BRIGADIER GENERAL MORRIS C. HANDWERK
BRIGADIER GENERAL EGBERT F. BULLENE

APPEARANCES:

(Same as heretofore noted)

REPORTED BY:

E. D. CONKLIN
L. H. WINTER
M. M. RACKLIN

P R O C E E D I N G S

GENERAL REYNOLDS: The Commission is in session. The Prosecution may make its opening statement.

MAJOR KERR: Sir, the members of the Commission, the Accused and Defense Counsel are present.

GENERAL REYNOLDS: The charge against the Accused is as follows:

"Tomoyuki YAMASHITA, General Imperial Japanese Army, between 9 October 1944 and 2 September 1945, at Manila and at other places in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he, General Tomoyuki YAMASHITA, thereby violated the laws of war."

It is backed by Bills of Particulars specifying one hundred twenty-three separate items or offenses, most of which were presented for our consideration.

The crimes alleged to have been permitted by the Accused in violation of the laws of war may be grouped into three categories: (1) Starvation, execution or massacre without trial and mal-administration generally of civilian internees and prisoners of war; (2) Torture, rape, murder and mass execution of very large numbers of residents of the Philippines, including women and children and members of religious orders, by starvation, beheading, bayoneting, clubbing, hanging, burning alive, and destruction by explosives; (3) Burning and demolition without adequate military necessity of large numbers of homes, places of business, places of religious worship, hospitals, public buildings, and educational institutions. In point of time, the offenses extended through-

out the period the Accused was in command of Japanese troops in the Philippines. In point of area, the crimes extended throughout the Philippine Archipelago, although by far the most of the incredible acts occurred on Luzon. It is noteworthy that the Accused made no attempt to deny that the crimes were committed, although some deaths were attributed by Defense Counsel to legal execution of armed guerrillas, hazards of battle and action of guerrilla troops favorable to Japan.

The Commission has heard 286 persons during the course of this trial, most of whom have given eye-witness accounts of what they endured or what they saw. They included doctors and nurses; lawyers, teachers, businessmen; men and women of religious orders; prisoners of war and civilian internees; officers of the United States Army; officers of the Japanese Army and Navy; Japanese civilians; a large number of men, women and children of the Philippines; and the Accused. Testimony has been given in eleven languages or dialects. Many of the witnesses displayed incredible scars of wounds which they testified were inflicted by Japanese from whom they made miraculous escapes followed by remarkable physical recovery. For the most part, we have been impressed by the candor, honesty and sincerity of the witnesses whose testimony is contained in 4055 pages in the record of trial.

We have received for analysis and evaluation 423 exhibits consisting of official documents of the United States Army, The United States State Department, and the Commonwealth of the Philippines; affidavits; captured enemy

documents or translations thereof; diaries taken from Japanese personnel, photographs, motion picture films, and Manila newspapers.

The Prosecution presented evidence to show that the crimes were so extensive and widespread, both as to time and area, that they must either have been wilfully permitted by the Accused, or secretly ordered by the Accused. Captured orders issued by subordinate officers of the Accused were presented as proof that they, at least, ordered certain acts leading directly to exterminations of civilians under the guise of eliminating the activities of guerrillas hostile to Japan. With respect to civilian internees and prisoners of war, the proof offered to the Commission alleged criminal neglect, especially with respect to food and medical supplies, as well as complete failure by the higher echelons of command to detect and prevent cruel and inhuman treatment accorded by local commanders and guards. The Commission considered evidence that the provisions of the Geneva Convention received scant compliance or attention, and that the International Red Cross was unable to render any sustained help. The cruelties and arrogance of the Japanese Military Police, prison camp guards and officials, with like action by local subordinate commanders were presented at length by the prosecution.

The Defense established the difficulties faced by the Accused with respect not only to the swift and overpowering advance of American forces, but also to the errors of his predecessors, weaknesses in organization, equipment, supply with especial reference to food and gasoline, training,

communication, discipline and morale of his troops. It was alleged that the sudden assignment of Naval and Air Forces to his tactical command presented almost insurmountable difficulties. This situation was followed, the Defense contended, by failure to obey his orders to withdraw troops from Manila, and the subsequent massacre of unarmed civilians, particularly by Naval forces. Prior to the Luzon Campaign, Naval forces had reported to a separate ministry in the Japanese Government and Naval Commanders may not have been receptive or experienced in this instance with respect to a joint land operation under a single commander who was designated from the Army Service. As to the crimes themselves, complete ignorance that they had occurred was stoutly maintained by the Accused, his principal staff officers and subordinate commanders; further, that all such acts, if committed, were directly contrary to the announced policies, wishes and orders of the Accused. The Japanese Commanders testified that they did not make personal inspections or independent checks during the Philippine campaign to determine for themselves the established procedures by which their subordinates accomplish their missions. Taken at full face value, the testimony indicates that Japanese senior commanders operate in a vacuum, almost in another world with respect to their troops, compared with standards American Generals take for granted.

We have considered carefully the final statements of the Prosecution and Defense Counsel.

This Accused is an officer of long years of experience, broad in its scope, who has had extensive command

and staff duty in the Imperial Japanese Army in peace as well as war in Asia, Malaya, Europe, and the Japanese Home Islands. Clearly, assignment to command military troops is accompanied by broad authority and heavy responsibility. This has been true in all armies throughout recorded history. It is absurd, however, to consider a commander a murderer or rapist because one of his soldiers commits a murder or a rape. Nonetheless, where murder and rape and vicious, revengeful actions are widespread offenses, and there is no effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his troops, depending upon their nature and the circumstances surrounding them. Should a commander issue orders which lead directly to lawless acts, the criminal responsibility is definite and has always been so understood. The Rules of Land Warfare, Field Manual 27-10, United States Army, are clear on these points. It is for the purpose of maintaining discipline and control, among other reasons, that military commanders are given broad powers of administering military justice. The tactical situation, the character, training and capacity of staff officers and subordinate commanders as well as the traits of character, and training of his troops are other important factors in such cases. These matters have been the principle considerations of the Commission during its deliberations.

The Accused, his Senior Counsel and personal interpreter will take position before the Commission.

(Whereupon, Colonel Clarke, Mr. Hamamoto, and the Accused stood before the Commission.)

(Whereupon the Accused addressed the Commission in native tongue.)

GENERAL REYNOLDS: Mr. Hamamoto may read the statement.

MR. HAMAMOTO: "In my capacity as Commander-in-Chief of the Japanese 14th Area Army I met and fought, here in the Philippines, numerically and qualitatively superior armed forces of the United States. Throughout this engagement I have endeavored to fulfil to the best of my ability the requirements of my position and have done my best to conduct myself at all times in accordance with the principles of fairness and justice.

"I have been arraigned and tried before this Honorable Commission as a war criminal. I wish to state that I stand here today with the same clear conscience as on the first day of my arraignment and I swear before my Creator and everything sacred to me that I am innocent of the charges made against me.

"With reference to the trial itself I wish to take this opportunity to express my gratitude to the United States of America for having accorded to an enemy General the unstinted services of a staff of brilliant, conscientious and upright American officers and gentlemen as Defense Counsel."

Thank you.

GENERAL REYNOLDS: General Yamashita: The Commission concludes: (1) That a series of atrocities and other high crimes have been committed by members of the Japanese armed forces under your command against people of the United States, their allies and dependencies throughout the Philippine

Islands; that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers; (2) That during the period in question you failed to provide effective control of your troops as was required by the circumstances.

Accordingly upon secret written ballot, two-thirds or more of the members concurring, the Commission finds you guilty as charged and sentences you to death by hanging.

The Accused and Japanese members of the Defense staff will be escorted from the Courtroom.

(Whereupon the Accused and Japanese members of the Defense staff were escorted from the courtroom.)

GENERAL REYNOLDS: Its task completed, the Commission adjourns, sine die.

(Whereupon, at 1415 hours, 7 December 1945, the trial was concluded.)

AUTHENTICATION OF RECORD

The foregoing 4,063 pages, contained in Volumes I to XXXIV inclusive (together with the Pleadings, Prosecution Exhibits 1 to 406 inclusive, Commission Exhibits "A" and "B", and Defense Exhibits "A" to "FF" inclusive, all under separate covers), are hereby certified as the Record of the Proceedings of the Military Commission appointed by paragraph 24, Special Orders 112, Headquarters United States Army Forces, Western Pacific, dated 1 October 1945, in the trial of the case of United States of America against Tomoyuki Yamashita.

Dated 11 December 1945.

/S/ Russel B. Reynolds
RUSSEL B. REYNOLDS
Major General, U.S.A.
President of Commission

THIS ACKNOWLEDGES that the above-described Record was submitted to Defense Counsel prior to being certified by the President of the Commission.

/S/ Harry E. Clarke
HARRY E. CLARKE
Colonel, JAGD
Chief, Defense Counsel

UNITED STATES OF AMERICA)

vs)

TOMOYUKI YAMASHITA)

Recommendation for Clemency

TO: Lieutenant General Wilhelm D. Styer, Appointing Authority in the above entitled case

and

General Douglas MacArthur, Confirming Authority in the above entitled case.

1. We, of the undersigned Defense Counsel in the above entitled case, hereby request that the findings of guilty be disapproved, for the reasons stated by the Defense throughout the trial which appear in the record thereof.

2. In the event that the findings of guilty are approved, the Defense Counsel hereby submits a recommendation for clemency.

3. The charge against the accused is:

"Tomoyuki YAMASHITA, General Imperial Japanese Army, between 9 October 1944 and 2 September 1945, at Manila and at other places in the Philippine Islands, while Commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines; and he, General Tomoyuki YAMASHITA, thereby violated the laws of war."

The Commission based its finding and sentence solely on the following two conclusions:

(1) That a series of atrocities and other high crimes have been committed by members of the Japanese armed forces under your command against people of the United States, their allies and dependencies throughout the Philippine Islands; that they were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers; (2) That during the period in question you failed to provide effective control of your troops as was required by the circumstances.

It is respectfully submitted that even were it a fact that the atrocities were not sporadic in nature but were supervised by Japanese officers and noncommissioned officers, these supervised cases were scattered over the entire area of the Philippine Islands and there was no evidence that the officers or noncommissioned officers who were responsible therefore reported these acts to General Yamashita. The second and basic conclusion of the Commission indicates that its members agree that the fact that in some instances there was a supervision by Japanese officers and noncommissioned officers does not warrant a conclusion that General Yamashita had ordered or directed the commission of such acts or that he had any knowledge that such acts had been or were being committed.

The second conclusion makes it apparent that the death sentence was adjudged for an offense that did not include any criminal intent, any specific intent, or any mens rea. At its worst, the offense stated by the Commission is simply unintentional ordinary negligence. The sentence of hanging is grossly disproportionate for such an offense.

4. The Commission said, inter alia:

"Taken at full face value, the testimony indicates that Japanese senior commanders operate in a vacuum, almost in another world with respect to their troops, compared with standards American Generals take for granted."

It is respectfully submitted that even though this be accepted as a fact, no General Officer commanding any army is to be held criminally liable and hanged for the customs and procedure inherent in that army simply because that standard of customs and procedure does not compare favorably with the standards of customs and procedure in the American Army.

5. The essence of the Commission's conclusion on which the finding of guilty was based: namely, the accused had failed to provide control of his troops as was required by the circumstances, makes it important to consider just what those circumstances were.

6. The evidence adduced by the Defense shows that within nine days after General Tomoyuki Yamashita assumed command of the 14th Area Army in

the Philippines, the American forces landed on Leyte and from that time until the surrender of General Yamashita on 3 September 1945, his troops were engaged continuously in combat; his entire command was subjected to attack by the American air forces and guerrillas and his supply dumps, supply lines, lines of communication and mobile equipment were damaged and in many cases destroyed. These conditions existed during practically the entire period of his command of the 14th Area Army and placed an unprecedented burden upon him and his headquarters. He had a mission to perform: the defense of the Philippine Islands. Due to the rapid advance of American forces, his mission then became the defense of Luzon, plans for which had to be perfected and carried out under the above conditions.

The first duty of an officer in any army is to accomplish the mission assigned to him. This General Yamashita attempted to do, concentrating most of his time and the time of the members of his staff on the countless operational matters involved in the accomplishment of his mission, and thereby, of necessity, relegating administrative functions within his command to a secondary role.

It is further respectfully submitted that under the circumstances and conditions which existed during General Yamashita's command of the 14th Area Army in the Philippine Islands, he, being a General with a mission to perform, did not fail to exercise control of his troops to the extent that he was criminally negligent in the performance of his duty and therefore subject to a criminal punishment adjudged by a Military Commission.

7. The Military Commission before announcing its findings and sentence entered into a discussion concerning the evidence adduced by the prosecution, including 423 exhibits, many of which were ex parte affidavits, and would not be considered as evidence of any value whatsoever in any Civil Court, Courts-Martial, or Military Commission functioning as an agent of the government of the United States.

8. The preliminary conclusion of the Commission to the effect that atrocities in many cases were methodically supervised by Japanese officers

and noncommissioned officers does not in any way indicate that these acts were within the knowledge of the accused. On the contrary the Commission in its basic conclusion found merely a failure to provide effective control of troops.

9. The prosecution introduced evidence of the commission of atrocities by troops under the accused's command. Some of the evidence was direct evidence but much of it was hearsay evidence, opinion evidence, and ex parte affidavits. The defense had no opportunity whatsoever to cross-examine the deponents executing the ex parte affidavits. This "evidence", admitted by the Commission, in its cumulative effect was extremely damaging to the accused and was prejudicial to the substantial rights of the accused. The prosecution did not introduce any direct evidence whatsoever to show that the accused had issued orders for the commission of the alleged atrocities; nor that he had received any reports from any subordinate officers, or from any other sources, that such alleged atrocities had been or were being committed; nor that he had any knowledge that such alleged atrocities had been or were being committed. Having no knowledge of the commission of the alleged atrocities, the accused could not have permitted the commission thereof as alleged in the charge, and the Commission in its conclusion indicated that it found no such permission.

10. This is the first time in the history of the modern world that a commanding officer has been held criminally liable for acts committed by his troops. It is the first time in modern history that any man has been held criminally liable for acts which according to the conclusion of the Commission do not involve criminal intent or even gross negligence. The Commission therefore by its findings created a new crime. The accused could not have known, nor could a sage have predicted, that at some time in the future a Military Commission would decree acts which involved no criminal intent or gross negligence to be a crime, and it is unjust, therefore, that the punishment for that crime should be the supreme penalty.

11. Uncontroverted testimony disclosed that the accused has an excellent reputation as a soldier, citizen and a man. He has consistently been allied with the so-called moderate group in Japan as distinguished from the radical or war monger group headed by Tojo. In 1929, as a member of the War Ministry headed by General Kazunari Ugaki, he drafted the plan for partial disarmament and reduction of the Japanese Army to a size that would meet minimum defense requirements.

12. In view of the above cited circumstances, in the interest of justice, particularly American justice, it is recommended that if the findings of guilty be allowed to stand, that the sentence of death by hanging be commuted to imprisonment for a term of years appropriate to the offense found by the Commission.

/S/ Harry E. Clarke
/T/ HARRY E. CLARKE
Colonel, JAGD,
Chief Defense Counsel

/S/ Walter C. Hendrix Jr.
/T/ WALTER C. HENDRIX JR.
Lt. Col., JAGD,
Assistant Defense Counsel

/S/ George F. Guy
/T/ GEORGE F. GUY
Major, Cavalry
Assistant Defense Counsel

/S/ Adolf F. Roel
/T/ ADOLF F. ROEL
Captain, JAGD,
Assistant Defense Counsel

/S/ Milton Sandberg
/T/ MILTON SANDBERG
Captain, JAGD,
Assistant Defense Counsel