

(184J)

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

UNITED STATES OF AMERICA
- vs -
MASAHARU HOMMA

PUBLIC TRIAL

VOLUME I
PAGES 1 TO 46

MANILA, P. I.

DATE 19 December 1945

COPY No. 13

AUTHENTICATION

THIS CERTIFIES that this volume is a part of the official Record of the Proceedings of the Military Commission appointed by paragraph 31, Special Orders 176, Headquarters United States Army Forces, Western Pacific, dated 15 December 1945, as amended by paragraph 39, Special Orders 186, Headquarters United States Army Forces, Western Pacific, dated 28 December 1945, in the trial of the case of United States of America against Masaharu Homma.

Dated 13 February 1946.

/s/ Leo Donovan
/t/ LEO DONOVAN
Major General, GSC, USA
President of Commission

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

UNITED STATES OF AMERICA)

-vs-)

MASAHARU HOMMA)
-----)

ARRAIGNMENT

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

Met, pursuant to Notice, at 0830 hours.

MEMBERS OF MILITARY COMMISSION:

MAJOR GENERAL LEO DONOVAN, GSC, Presiding Officer
and Law Member
MAJOR GENERAL BASILIO J. VALDES, Philippine Army
BRIGADIER GENERAL ROBERT G. GARD, USA
BRIGADIER GENERAL ARTHUR G. TRUDEAU, USA
BRIGADIER GENERAL WARREN H. McNAUGHT, USA

APPEARANCES:

FOR THE PROSECUTION:

LIEUTENANT COLONEL FRANK E. MEEK, FA, Prosecutor
MAJOR MANUEL LIM, JAGS, Philippine Army, Assistant
Prosecutor
CAPTAIN DELMAS C. HILL, JAGD, Assistant Prosecutor
FIRST LIEUTENANT PAUL WHITE, INF, Assistant
Prosecutor
FIRST LIEUTENANT ABRAM RAFF, INF, Assistant
Prosecutor
LIEUTENANT BENJAMIN F. SCHWARTZ, USNR, Assistant
Prosecutor

FOR THE DEFENSE:

MAJOR JOHN H. SKEEN, JR., INF, Chief Defense Counsel
CAPTAIN FRANK R. CODER, JR., FA, Assistant Defense
Counsel
CAPTAIN GEORGE W. OTT, JAGD, Assistant Defense
Counsel
CAPTAIN GEORGE FURNESS, AIR CORPS, Assistant Defense
Counsel
FIRST LIEUTENANT ROBERT L. PELZ, CAC, Assistant
Defense Counsel
FIRST LIEUTENANT LEONARD NATAUPSKY, QMC, Assistant
Defense Counsel

INTERPRETERS FOR THE COMMISSION:

MAJOR HARRY D. PRATT, USMC, Chief Interpreter
CAPTAIN MALCOLM ST C. FREHN, INF
SECOND LIEUTENANT FRED ASANO

OFFICIAL REPORTERS FOR THE COMMISSION:

LORENZ H. WINTER
MACK M. RACKLIN

REPORTED BY:

LORENZ H. WINTER
MACK M. RACKLIN

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P R O C E E D I N G S

GENERAL DONOVAN: This Military Commission has been appointed by Lieutenant General W. D. Styer, Commanding General of the United States Army Forces in the Western Pacific, by direction of General Douglas MacArthur, Supreme Commander for the Allied Powers, to conduct the trial of Masaharu Homma, who during the period covered by the charge and specifications was a Lieutenant General of the Imperial Japanese Army.

The proceedings will be confined strictly to a fair, expeditious hearing on the issues raised by the specifications and the charge. Sessions of the Commission shall be public, except when otherwise directed by the Commission.

The Commission is now in session, and will hear any matters to be brought before it.

COLONEL MEEK: If the Commission please, the proceedings to follow involve a Japanese who understands and speaks the English language, and who has been furnished with a competent interpreter. It has been agreed between the Prosecution and the Accused that it is not necessary for these proceedings to be translated into Japanese.

GENERAL DONOVAN: The proceedings will be in English, and it is not necessary for them to be translated into Japanese.

COLONEL MEEK: There has been referred to this Commission for trial the case of the United States of America against Masaharu Homma, who during the period covered by these charges was a Lieutenant General in the Japanese Army.

The Accused is now present, together with Defense Counsel appointed by the convening authority.

The Prosecution is ready to proceed.

GENERAL DONOVAN: You may proceed.

COLONEL MEEK: The Prosecution at this time submits, for incorporation into the record of these proceedings, the following documents:

Letter Order AG 000.5 (5 December 45) IS, General Headquarters, Supreme Commander for the Allied Powers, dated 5 December 1945, the subject being "Regulations Governing the Trials of Accused War Criminals".

(The Letter Order referred to appears in the following words and figures, to-wit:)

"R E S T R I C T E D

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

AG 000.5 (5 Dec 45) IS

APO 500
5 December 1945

SUBJECT: Regulations Governing the Trials of Accused War Criminals.

TO : Commander-in-Chief, United States Army Forces,
Pacific, APO 500
Commanding General, Sixth Army, APO 412
Commanding General, Eighth Army, APO 343
Commanding General, XXIV Corps, APO 235

"The following rules and regulations will govern the trials of persons, units and organizations accused as war criminals:

1. ESTABLISHMENT OF MILITARY COMMISSIONS.

a. General. Persons, units and organizations accused as war criminals will be tried by military commissions to be convened by, or under the authority of, the

Supreme Commander for the Allied Powers.

b. Number and Types. The commissions will be established dependent upon the number, nature of the offenses involved and the offenders to be tried. Such commissions may include, among others, international military commissions consisting of representatives of several nations or of each nation concerned, appointed to try cases involving offenses against one (1) or more nations.

2. JURISDICTION.

a. Over Persons. The military commissions appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

b. Over Offenses.

(1) Military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(a) The planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) Violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or persons on the seas or elsewhere; improper treatment of hostages; plunder of public or private

property; wanton destruction of cities, towns or villages; or devastation not justified by military necessity.

(c) Murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.

(2) The offense need not have been committed after a particular date to render the responsible party or parties subject to arrest, but in general should have been committed since or in the period immediately preceding the Mukden incident of September 18, 1931.

3. MEMBERSHIP OF COMMISSION.

a. Appointment. The members of each military commission will be appointed by the Supreme Commander for the Allied Powers, or under authority delegated by him. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

b. Number of Members. Each commission shall consist of not less than three (3) members.

c. Qualifications. The convening authority shall appoint to the commission persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A commission may consist of Army, Navy or other service personnel, or of both service personnel and civilians. One specially qualified member shall be designated as the law member whose ruling is final insofar as concerns the commission on an objection to the admissibility of evidence offered during the trial.

d. Voting. Except as to the admissibility of evidence, all rulings and findings of the commission shall be by majority vote, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (2/3) of the members present.

e. Presiding Member. In the event that the convening authority does not name one of the members as the presiding member, the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

4. PROSECUTORS.

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission. Where offenses involve nationals of more than one nation, each nation concerned, in the discretion of the convening authority, may be represented among the prosecutors.

b. Duties. The duties of the prosecutors are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

5. POWERS AND PROCEDURE OF COMMISSIONS.

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public sessions except when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

b. Rights of the Accused. The Accused shall be entitled:

(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of

his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

c. Witnesses. The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate to the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2), above.

(4) To have evidence taken by a special commissioner appointed by the commission.

d. Evidence.

(1) The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document irrespective of its classification which appears to the commission to have been signed

or issued by any officer, department, agency or member of the armed forces of any government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person whom the commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter or other document, including sworn or unsworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of its contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

(4) If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence

which has been given previously at a trial resulting in the conviction of any other member of that unit, group or organization, relative to that concerted offense, may be received as prima facie evidence that the accused likewise is guilty of that offense.

(5) The findings and judgment of a commission in any trial of a unit, group, or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial, by that or any other commission, of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in that unit, group or organization convicted by a commission, the burden shall be on the accused to establish by proof any mitigating circumstances relating to his membership or participation therein.

(6) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(7) All purported confessions or statements of the accused shall be admissible without prior proof that they were voluntarily given, it being for the commission to determine only the truth or falsity of such confessions or statements.

e. Trial Procedure. The proceedings at each trial

will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification will be read, or its substance stated, in open court.

(2) The presiding member shall ask each accused whether he pleads 'Guilty' or 'Not Guilty'.

(3) The prosecution shall make its opening statement.

(4) The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

(5) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(6) The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

(7) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prose-

cution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

(8) The defense, and thereafter the prosecution, shall address the commission.

(9) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence, if any. The commission may state the reasons on which the judgment is based.

f. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property or order its delivery to the Supreme Commander for the Allied Powers for disposition as he shall find to be proper, or may order restitution with appropriate penalty in cases of default.

h. Approval of Sentence. No sentence of a military

commission shall be carried into effect until approved by the officer who convened the commission, or his successor. Such officer shall have authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. No sentence of death shall be carried into execution until confirmed by the Supreme Commander for the Allied Powers. Except as herein provided, the judgment and sentence of a commission shall be final and not subject to review.

6. RULE MAKING POWER.

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof, or such rules and forms as may be prescribed by the convening authority or by the Supreme Commander for the Allied Powers.

By command of General MacARTHUR:

H. W. ALLEN
Colonel, A.G.D.,
Asst Adjutant General."

COLONEL MEEK: Letter Order, AG 000.5 (6 December 45)
IS, General Headquarters, United States Army Forces,
Pacific, dated 6 December 1945, the subject being "Trials
of Masaharu Hcmmu, and others".

(The Letter Order referred to appears in the following words and figures, to-wit:)

"GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

AG 000.5 (6 Dec 45) LS

Advance Echelon
APO 500
6 December 1945

SUBJECT: Trials of Masaharu Homma, and others.

TO : Commanding General,
United States Army Forces, Western Pacific, APO 707.

1. Pursuant to authority delegated this headquarters contained in letter, General Headquarters, Supreme Commander for the Allied Powers, File AG 000.5 (5 Dec 45), Subject: Regulations Governing the Trials of Accused War Criminals, said power is re-delegated to you and you are hereby directed to appoint Military Commissions for the trials of the following named members of the Japanese Imperial Forces:

- a. Masaharu Homma
- b. Seiichi Ohta
- c. Zenzo Saito
- d. Takashi Tohei
- e. Akiri Nagahama

2. The trials are to be held in the city of Manila, Philippine Islands. All trials held under this authority shall be conducted in conformity with Regulations Governing the Trials of Accused War Criminals, dated 5 December 1945, General Headquarters Supreme Commander for the Allied Powers.

3. All records of trial including judgment or sentence and the action of the appointing authority will be forwarded to this headquarters. Unless otherwise directed, the execution of any death sentence will be withheld pending the action of the Supreme Commander for the Allied Powers.

4. The following named officers assigned to War Crimes Branch, this headquarters, have been made available to your command for service as prosecution personnel on the Military Commissions to be convened by you for this purpose:

Prosecution Personnel for the Homma Trial

Lt. Colonel Frank E. Meek, FA
Lt. (sg) B. F. Schwartz, USNR
Lt. (sg) E. E. Dunaway, USNR
1st Lt. Paul White, Inf
1st Lt. Abram Raff, Inf
1st Lt. N. W. Hansen, USMCR

Prosecution Personnel for the Ohta Trial

1st Lt. Samuel B. Gill, Inf
1st Lt. Theodore J. Raczka, CAC

Prosecution Personnel for the Saito Trial

Capt. William N. Colyer, JAGD
Capt. Jack Pace, Inf.

Prosecution Personnel for the Tohei and
Nagahama Trials

Lt. (jg) Raymond J. Kremer, USNR
Lt. (jg) Robert E. Jones, USNR

By command of General MACARTHUR:

/s/ H. W. Allen
/t/ H. W. ALLEN
Colonel, A.G.D.,
Asst. Adjutant Gen.

- 5 Incls:
Incl 1 -- Chgs vs Masaharu Homma
Incl 2 -- Chgs vs Seiichi Ohta
Incl 3 -- Chgs vs Aeuzo Saito
Incl 4 -- Chgs vs Takashi Tohei
Incl 5 -- Chgs vs Akiri Nagahama."

COLONEL MEEK: We submit next Paragraph 31 of Special Order No. 176, Headquarters, United States Army Forces, Western Pacific, dated 15 December 1945, entitled "Appointment of a Military Commission".

(Paragraph 31 of the Special Orders referred to appears in the following words and figures, to-wit:)

"HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC

Special Orders)
 :
No.....176)

APO 707
15 December 1945

EXTRACT

* * * * *

31. Appointment of a Military Commission. Pursuant to authority contained in Letter, General Headquarters, United States Army Forces, Pacific, file: AG 000.5 (6 Dec 45) 6 December 1945, subject: 'Trials of Masaharu Homma, and Others', the following officers are hereby appointed as members of a Military Commission for such cases of war crimes as may be referred to said commission:

Major General LEO DONOVAN GSC, President and
Law Member
Major General BASILIO J. VALDES Philippine Army
Brigadier General ROBERT G GARD USA
Brigadier General ARTHUR G TRUDEAU USA
Brigadier General WARREN H McNAUGHT USA

The prosecution shall be conducted by Lieutenant Colonel FRANK E MEEK, FA; Major MANUEL LIM, JAGS, Philippine Army; Lieutenant BENJAMIN F SCHWARTZ, USNR; Captain DELMAS C HELL, JAGD; First Lieutenant PAUL WHITE, Inf; and First Lieutenant ABRAM RAMF, Inf. Defense Counsel shall be Major JOHN H SKFEN, Inf; Captain GEORGE W OTT, JAGD, Captain FRANK R CODER, JR., FA, First Lieutenant ROBERT L PELZ, CAC; and First Lieutenant LEONARD NATAUPSKY, QMC.

The Commission shall meet in the City of Manila, Philippine Islands, at the call of the President thereof.

The Commission is authorized to employ or appoint such interpreters, stenographic reporters, and other assistants as it shall deem advisable.

The Commission shall follow the provisions of Letter, General Headquarters, Supreme Commander For The Allied Powers, file: AG 000.5 (5 Dec 45) LS, 5 December 1945,

Subject: 'Regulations Governing the Trials of Accused War Criminals', and have power to, and shall, as occasion requires, consistent with said regulations, make such rules for the conduct of the proceedings as it shall deem necessary for a full and fair trial of the person or persons before it. Such evidence shall be admitted as would have probative value to a reasonable man and is relevant and material to the charges before the commission. The concurrence of at least two-thirds of the members of the commission present shall be necessary for a conviction or sentence. The record of trial, including any judgment or sentence, shall be transmitted directly to this Headquarters for action by the appointing authority.

* * * * *

BY COMMAND OF LIEUTENANT GENERAL STYER:

W A WOOD JR
Major General, USA
Deputy Commander, and
Chief of Staff

OFFICIAL:

/s/ Benito Morales
/t/ BENITO MORALES
Colonel, AGD
Asst Adj Gen."

COLONEL MEEK: We submit next, Letter Order, Subject "Summoning and Swearing Witnesses for Homma Trial," dated 18 December 1945, issued by the President of this Commission to the Prosecutor for the Commission, authorizing the Prosecution to summon witnesses and swear witnesses for this trial.

(The Letter Order referred to appears in the following words and figures, to-wit:)

"MILITARY COMMISSION
Convened by the
COMMANDING GENERAL
UNITED STATES ARMY FORCES, WESTERN PACIFIC

APO 707
18 December 1945

SUBJECT: Summoning and Swearing Witnesses for Homma Trial.

TO: Prosecutor for Commission

1. Pursuant to authority of provisions of Letter, General Headquarters, Supreme Commander for the Allied Powers, 5 December 1945, subject: 'Regulations Governing the Trials of Accused War Criminals', you are authorized, as prosecutor of cases referred for trial to the Military Commission convened by the Commanding General, United States Army Forces, Western Pacific, by paragraph 31, Special Order No. 176, dated 15 December 1945, to issue, for this Commission, summons to compel the attendance of witnesses to any such trial and to require such witnesses to bring with them any papers or documents which may be used as evidence in such trial, and to administer oaths or affirmations to witnesses and other persons.

LEO DONOVAN
Major General, GSC
President of Commission."

GENERAL DONOVAN: There being no objection, the orders are received in evidence.

COLONEL MEEK: The Prosecution is ready to proceed with the arraignment of Masaharu Homma.

GENERAL DONOVAN: The reporters will be sworn.

(Whereupon Reporters Lorenz H. Winter and Mack M. Racklin were sworn.)

GENERAL DONOVAN: The interpreters will be sworn.

(Whereupon Major Harry D. Pratt, Captain Malcolm St. C. Frehn, Lieutenant Fred Asano, Staff Sergeant Yajima, Staff Sergeant Oishi, Staff Sergeant Ogita, T/4 Baba, T/4 Hatakeda, T/4 Honda, T/4 Yorioka, Sergeant Riley, Mrs. Rosario F. Rodas, Filomena Zosa, Wenceslao Lavengco, Jesus Villa Real, Narciso E. Albano, Angelo R. Celas, Pacifico Gojungco, were sworn as interpreters.)

GENERAL DONOVAN: The Commission will be sworn.

(Whereupon the members of the Military Commission were sworn.)

GENERAL DONOVAN: The Prosecution will be sworn.

(Whereupon the Prosecutor and Assistant Prosecutors were sworn.)

COLONEL MEEK: A certified copy of the charge, additional charge, specifications and additional specifications against Masaharu Homma, together with a true and complete translation thereof, was served upon the Accused by Lieutenant Colonel Meek on 17 December 1945 at Manila, in the Philippine Islands.

GENERAL DONOVAN: The rights of the Accused, as set forth in Paragraph 5 (b) of letter dated 5 December 1945, General Headquarters, Supreme Commander for the Allied Powers, entitled "Regulations Governing the Trials of Accused War Criminals", heretofore introduced into the record, will now be read and explained to the Accused.

"RIGHTS OF THE ACCUSED. The Accused shall be entitled:

"(1) To have in advance of trial a copy of the charges and specifications clearly worded so as to apprise

the Accused of each offense charged.

"(2) To be represented, prior to and during the trial by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

"(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and to cross-examine each adverse witness who personally appears before the commission.

"(4) To have the substance of the charges and specifications, the proceedings of any documentary evidence translated when he is unable otherwise to understand them."

The provisions of sub-paragraph 1 above having been complied with, it appearing that a certified copy of the charge and specifications, together with a true and complete translation thereof were served upon the Accused on 17 December 1945, whom does the Accused desire to introduce as Defense Counsel?

THE ACCUSED: I am satisfied to be represented by the duly appointed Defense Counsel, but I desire that Captain George Furness, Air Corps, be appointed as additional Defense Counsel on my behalf.

GENERAL DONOVAN: What is the name of that officer?

MAJOR SKEEN: Captain George Furness.

GENERAL DONOVAN: Arrangements will be made to have Captain Furness here, if he is available.

MAJOR SKEEN: If the Commission please, Captain Furness is in court this morning, and I request that you appoint him now.

GENERAL DONOVAN: Captain Furness will be appointed on the Defense Staff.

MAJOR SKEEN: Very well.

GENERAL DONOVAN: Does the Accused wish to have the charge and specifications, the proceedings and documentary evidence translated to him?

MAJOR SKEEN: It has been agreed by the Prosecution and the Defense that it will be not necessary to translate these proceedings into Japanese.

However, it is desired that should at any time it develop that the Accused is unable to understand or follow the proceedings, sufficient time be allowed for the necessary translation or interpretation.

GENERAL DONOVAN: That will be done.

The charge, additional charge, specifications and additional specifications, will be read to the Accused.

"That Masaharu HOMMA, then Lieutenant General of the Japanese Imperial Army and Commander-in-Chief in the Philippines of the Armed Forces of Japan at war with the United States of America and its Allies did on 6 May 1942 unlawfully refuse to grant quarter to the Armed Forces of the United States of America and its Allies in Manila Bay, Philippines, and did thereby violate the laws of war."

It has been stipulated between counsel that other than the reading of the Charge and the Additional Charge the reading of the specifications in each case will be waived.

MAJOR SKEEN: The Defense agrees to that.

GENERAL DONOVAN: Does the Accused understand that and is he satisfied with that?

MAJOR SKEEN: That has been explained to the Accused and he fully understands it and agrees to it.

GENERAL DONOVAN: There being no objections, the Charge and the Additional Charge and the specifications and the additional specifications will be received into the record.

- - -

(The specifications referred to appear in the following words and figures, to-wit:)

SPECIFICATIONS

From about 7 December 1941 until about 15 August 1942, at Manila and other places in the Philippines, members of the Armed Forces of Japan under the command of the Accused committed the following atrocities:

1. The willful and wanton bombing of the City of Manila on 27 and 28 December 1941 by units of the Japanese Air Force, after proclamations had been issued on 26 December 1941 by General Douglas MacArthur, Commander-in-Chief of the American Forces, President Manuel Quezon of the Philippine Commonwealth, and Francis B. Sayre, American High Commissioner, declaring Manila an open and undefended city, and after the Japanese had been informed of said proclamations, as a result of which a number of public and private buildings, churches, schools and hospitals were destroyed or damaged, and numerous persons were wounded or killed.

2. About 7 April 1942, units of the Imperial Japanese Air Forces unlawfully bombed General Hospital No. 1, "Little Baguio", Bataan, Philippines, resulting in the death and wounding of sixty-nine Americans and fifty-two Filipinos, as well as the destruction of portions of said hospital.

3. From about 12 April 1942 until about 9 May 1942 at General Hospital No. 2 Bataan, Philippines, Japanese artillery units willfully and deliberately refused to permit the evacuation of American patients and medical personnel, after said units had been placed around the hospital and fired upon American installations

on Corregidor, drawing a return fire from the American artillery, thereby exposing them to said shell fire, as a result of which numerous American patients and medical personnel were wounded or killed.

4. The widespread raping and brutal mistreatment of American and Filipino women throughout the Philippines.

5. On or about 10 May 1942, at General Hospital No. 2, Bataan, Philippines, members of the Japanese Army, without cause or trial brutally and deliberately bayoneted and murdered numerous American and Filipino prisoners of war.

6. On or about 9 May 1942, at General Hospital No. 2, Bataan, Philippines, without cause or trial four unidentified soldiers, then prisoners of war, who entered into a restricted area, were brutally tortured and mistreated, being severely beaten about the head and shoulders until they fell down. Two of such soldiers were knocked unconscious and had to be carried away.

7. From about 9 April 1942 to about 19 June 1942, members of the Japanese Imperial Forces, deliberately and willfully failed and refused to provide food, medicine, clothing, and other necessities to patients in General Hospitals No. 1 and No. 2, Bataan, Philippines, resulting in mistreatment, starvation, and malnutrition of a great number of said patients.

8. About 13 April 1942 at Cabcaban Air Field, an unidentified Japanese officer of the Japanese Imperial Forces, brutally and inhumanly, without any provocation beheaded an entire unidentified Filipino family of eight,

including one child.

9. On or about 6 April 1942 at Bataan, Philippines, without cause or trial, the torturing of Cpl. Gotlieb G. Niegum and another American soldier, both prisoners of war, who were beaten and hung suspended by their wrists from a tree for one and one-half days.

10. On or about 10 April 1942 at Bataan, Philippines, members of the Japanese 16th Division of the Japanese Imperial Forces, without cause or trial brutally tortured approximately twenty-five Filipino prisoners of war by using them for bayonet practice, resulting in the death of all of said Filipinos.

11. About 8 and 9 April 1942 members of the Japanese Air Forces strafed American and Filipino forces at Mariveles Air Field, after the surrender of Bataan had taken place, in spite of the fact that these troops were displaying a large white flag of truce at the time of said strafing.

12. On or about 12 April 1942 at Mariveles, Bataan, without cause or trial, brutally torturing Lt. Joseph F. Boyland, a prisoner of war, for refusing to give the Japanese any information. Said torturing consisted of sticking the point of a knife into various parts of his body, beating, and refusing to give to said officer food and water, for a period of about three or four days.

13. From about 9 April 1942 to about 27 April 1942 there was conducted the infamous "Death March of Bataan" which was a series of "Death Marches" in which approximately 10,500 American and approximately 74,800 Filipino

prisoners of war were forced to march distances ranging from 60 to 120 kilometers from Bataan to San Fernando although transportation was available and was to have been used under the terms of the surrender agreement, during which time the following atrocities were committed:

a. Brutally mistreating, assassinating and killing by bayoneting and shooting, without cause or trial, Pvt. John Doran, Sgt. Joe R. Vaughn, Colonel McConnel, Commanding Officer Depot QM, Philippine Dept., Pvt. John Osowski, Pvt. Robert Baldwin, Pvt. Harry La Chance, Captain David Miller, 2nd Lt. Glen Shaffner, and numerous other American and Filipino officers and enlisted men and unarmed civilians, many of whom because of illness, disease and exhaustion were unable to continue the march and were bayoneted and shot while being helpless and defenseless.

b. Tying together and massacring by beheading, bayoneting and shooting on or about 12 April 1942 near Pantingan River, Bataan, a group of approximately 400 officers and non-commissioned officers of the Philippine Army, then prisoners of war.

c. Brutally mistreating, assassinating and killing, by beating with clubs, rifle butts, bamboo sticks and other blunt instruments without cause or trial one Colonel Utenberg, Captain Spigler, M/Sgt. Lee, and numerous other American and Filipino officers and enlisted men.

d. Brutally and inhumanly burying alive numerous American and Filipino officers and enlisted men.

e. Brutally mistreating and torturing by requiring numerous American and Filipino prisoners to be exposed to the hot rays of the sun without any protection for unreasonably long periods of time.

f. Willful and deliberate failure and refusal to furnish even a minimum of food, water, shelter, and medical attention; prisoners were beaten, bayoneted and shot when they stopped to secure food and water by the roadside; prisoners were deprived of their shoes and forced to march barefoot even after their feet were cut and bleeding.

g. Exposing said prisoners of war to artillery fire from Corregidor by halting them near Japanese artillery positions, resulting in the killing of numerous American and Filipino soldiers.

h. Willfully and systematically stole, robbed and looted from the persons of said prisoners of war their personal belongings such as money, jewelry, blankets, toilet articles, cigarettes, cameras, and other personal objects; in at least one instance a Japanese guard using a rifle butt brutally knocked the teeth out of an American soldier's mouth in order to obtain gold fillings and inlays from said teeth.

i. Brutally and inhumanly confining said prisoners of war in various camps and compounds along the line of march; at Lubac several thousand men at point of Japanese bayonet were herded into a sheet metal covered warehouse, the building being so crowded that no one could lie down, except those that passed out and

slumped to the floor, who in many cases were trampled by those remaining in a standing position.

j. By transporting said prisoners of war from San Fernando to Capas under the most cruel and inhuman conditions; men were piled into box cars in such crowded conditions that none could sit down and with hardly room enough to stand; cars were sealed up, and men were kept there from early morning until late afternoon; there being no toilet facilities the men were forced to urinate and defecate in their clothes; there being no ventilation, a lack of food and water, and many men sick with dysentery, malaria and other diseases resulting in the loss of consciousness to numerous individuals.

k. That as a result of said "Death March" and the foregoing atrocities approximately 1,200 American and approximately 16,000 Filipino prisoners of war were missing and dead.

14. During the period from about 9 April 1942 to 1 August 1942 at Camp O'Donnell, Capas, Tarlac, Philippines, the systematic cruel, barbarous and uncivilized treatment of American and Filipino prisoners of war, by willfully and deliberately failing and refusing to furnish or to permit the construction of sanitary latrines or any other necessary sanitation; by failing and refusing to furnish food consisting of more than a starvation diet, necessary medicine for the sick and wounded, adequate and safe drinking water; by failing and refusing to permit the Red Cross or other social agencies to perform their authorized functions and

some cases taking the food and supplies for their own use; by willfully and deliberately forcing American and Filipino prisoners of war to perform labor while sick with disease and physically unfit; by generally mistreating, torturing, and executing numerous American and Filipino prisoners of war for minor infractions. By reason of the above atrocities during said period the deaths of approximately 1522 American and 29,000 Filipinos are recorded.

15. During the months of May, June and July 1942 at Camps 1, 2, and 3, Cabanatuan, Luzon, Philippines, the systematic cruel, barbarous and uncivilized treatment of American prisoners of war by willfully and deliberately failing and refusing to furnish proper shelter and hospital facilities; by failing and refusing to furnish proper toilet facilities and other sanitation; by failing and refusing to furnish sufficient food, antitoxin for a diphtheria epidemic and other medicines, adequate and uncontaminated drinking water; by willfully and deliberately forcing American prisoners of war to clean Japanese latrines with their bare hands and to place the excreta into 55 gal. drums which they had to carry about one mile to a farm where they were required to spread it by hand over the garden; by generally mistreating, torturing and executing numerous American and Filipino prisoners of war for minor infractions. By reason of the above atrocities, during the period 1 June 1942 and to 15 August 1942 the deaths of approximately 1,463 American prisoners are recorded.

16. During the period between January 1942 and 15

August 1942 at Bilibid Prison, Manila, Philippines, the systematic cruel, barbarous and uncivilized treatment of American prisoners of war by willfully and deliberately failing and refusing to furnish proper shelter and sanitary facilities; by failure to provide sufficient food; by deliberate withholding of medical supplies from the sick; by generally mistreating, beating, torturing said prisoners; and killing, without cause or trial one Sgt. Hight and many other American prisoners of war.

17. Between about 20 May 1942 and 15 August 1942 at Bacolod Prisoner of War and Civilian Internment Camp, Negros Island, the cruel and unlawful treatment of American and other nationals by willfully and deliberately failing and refusing to provide proper shelter, sanitary facilities, medical supplies and attention; by failure to provide sufficient food; by slapping and otherwise subjecting civilian women to indignities; by forcing prisoners of war to drive trucks in hauling Japanese soldiers and munitions for operations against guerrilla forces.

18. From about 28 December 1941 to April 1942 at Camp John Hay, Civilian Internment Camp, Baguio, Luzon, the inhuman and uncivilized treatment of American, Filipino, and Chinese nationals by willfully and deliberately failing and refusing to furnish proper housing and sanitary facilities; by failure to provide sufficient food; by failing to provide medicine and medical attention; by cruelly beating, torturing and subjecting to gross indignities many of said internees.

19. About 16 May 1942 at Provincial Prison, Iloilo Province, Panay, Philippines, without cause or trial the brutal, barbarous, and sadistic torturing of Dr. Gilbert Isbam Cullen, an unarmed American citizen, and the deliberate and systematic starvation of said doctor for a period of 8 months thereafter, resulting in permanent maiming and physical disabilities.

20. About 17 April 1942, at Chinese Cemetery, Santa Cruz, Manila, Philippines, without cause or trial the brutal and barbarous execution of Dr. Clarence Kwangson Young, Chinese Consul General of the Philippines, Kai Yien Mok, Siao Piu Chu, Yu Heng Loo, Isu Siu Yao, Tom Ming Siao, Ching Siu Young and James Kung Wei Wang, members of the Chinese Consulate.

21. During the period from about January 1942 to about July 1942 at Santo Tomas Civilian Internment Camp, Manila, Philippines, the inhuman and uncivilized treatment of American, Filipino, Chinese and other nationals interned by the Japanese Imperial Forces by willfully and deliberately failing and refusing to furnish proper housing facilities, by failure to provide proper sanitary facilities, by failing to provide medicine and necessary medical attention; by failing to provide any food, and by beating and torturing some of said internees for the purpose of eliciting information; by brutally beating, torturing and finally executing Thomas Henry Fletcher, Henry Edward Weeks, and a Mr. Laycock, British Nationals.

22. About 4 July 1942 a large number of American

and Filipino prisoners of war, while in a weakened condition were forced to march from Dansalan to Iligan, during which march said prisoners were not given food nor were permitted to drink water except from carabao wallows, were beaten and bayoneted resulting in the death of a number of said prisoners; during said march a Major Navins, an American officer with the 61st Philippine Army was brutally shot and killed after he had collapsed from sun stroke.

23. From May until 15 August 1942 at Camp Keithley, Dansalan, Lanao, Mindanao, Philippines, the systematic cruel, barbarous and uncivilized treatment of prisoners of war, by willfully and deliberately failing and refusing to furnish adequate shelter and necessary sanitary facilities by failing and refusing to furnish adequate food and safe drinking water, and medicine for the sick and wounded. About 3 July 1942 at said camp, the brutal bayoneting and executing of Colonel Robert Veasey, Captain J. Price and one Sgt. Chandler, American prisoners of war, as reprisal for the escape of 4 other prisoners.

24. From May until 15 August 1942 at Malaybalay, Mindanao, the systematic cruel, barbarous and uncivilized treatment of prisoners of war, by willfully and deliberately failing and refusing to furnish adequate shelter and necessary sanitary facilities; by failing and refusing to furnish adequate food and safe drinking water and medicine for the sick and wounded. In August 1942 at said camp, without cause or trial, the brutal and barbarous execution of one Sgt. Slascio and another Filipino

soldier, both prisoners of war.

25. From about March 1942 until 15 August 1942 the unlawful and illegal use of American and Filipino prisoners of war at Nichols Field, Philippines, as details to clean and clear the air field, to build runways and revetments and to perform any other labor on said field to make it usable for fighters, bombers and reconnaissance planes; during said period of time the willful and deliberate failure to supply adequate food, clothing, and misappropriation of Red Cross Supplies at Pasay Elementary School, Pasay, Philippines; forcing said prisoners to march a distance of 5 to 6 miles from said school to Nichols Field and then back after laboring approximately 11 hours and after many of said prisoners had been beaten and tortured and were in a sickened, diseased and exhausted condition.

26. About May 1942 at Pasay Elementary School, Pasay, Rizal, Philippines, the brutal killing of two American prisoners of war, D. L. Hardy and William B. Short and 3 unidentified Filipino prisoners; about July 1942 at Nichols Field, Philippines, the brutal beating to death of an unidentified American prisoner, unable to keep up with work because of malnutrition and malaria; about 10 August 1942 at Pasay Elementary School the brutal beating of approximately 80 unidentified sick American prisoners.

27. About 6 and 7 May 1942 the willful, deliberate, and unlawful aerial bombing and artillery shelling of Corregidor after a white flag had been raised at t

top of Manila Hill by the American forces, by reason of which numerous Americans were wounded and killed.

28. From about 8 May 1942 to about 24 May 1942 at Corregidor the herding of 10,000 American and Filipino soldiers and civilians in a compound known as 92nd Garage area, with no shelter provided, with no food, with no medical attention or medical supplies, with no sanitary facilities, with individuals suffering from malaria, dysentery, and other diseases mixed indiscriminately in said group; the brutal mistreatment by beating, torturing and shooting any individuals who attempted to leave compound.

29. During May and June 1942 the willful and deliberate loading of the prisoners captured on Corregidor on barges for transport to the city of Manila, thousands of whom were suffering from malaria, dysentery and other diseases and were so weak they could hardly walk, with no sanitary facilities, without food and water and with no place to sit down; then unnecessarily forcing them into the water near a beach several miles down the bay instead of unloading them at the pier of Manila.

30. About 26 May 1942 at Manila, Philippines, Japanese Cavalry units compelled the prisoners captured on Corregidor to participate in the so called "Dewey Boulevard Victory March", which was a march of 5 to 6 hours to Bilibid Prison in Manila, whereby the prisoners were paraded along Dewey Boulevard to be exhibited as objects of humiliation and degradation in the eyes of

thousands of Filipinos and Japanese. During said march no food, or water, was provided, many persons weak and exhausted from lack of food, sickness and exposure to the hot sun fell out of line and were brutally beaten by Japanese guards.

31. During the latter part of May 1942 the transportation of said prisoners captured at Corregidor from Bilibid Prison to Cabanatuan Prison in an inhuman and uncivilized manner, by crowding groups of 100 persons into small cars, many of them suffering from malaria, dysentery and other diseases, and keeping them locked in said cars for a period of 6 to 8 hours, as a result of which many persons fainted and were in a complete state of exhaustion.

32. During May and June 1942 at Lumbang, Ieguan, Philippines, keeping American prisoners of war in the Lumban Camp under the most unsanitary conditions, and willfully failing to supply adequate food, medical care and medicines and working many of said prisoners while they were sick with dysentery, cerebral malaria and other diseases; the brutal execution about 12 June 1942 of Sgt. Bernard G. Knopick, Sgt. Isaac Landy, Sgt. James Lewis Turner, Cpl. Stanton R. Bett, Cpl. David A. Reas, Cpl. John B. Wiczorek, Pfc. Percival H. Hollyman, Pfc. Wade H. Rodgers and Pvt. John Dudash, all American prisoners of war as reprisal for the escape of an American prisoner.

33. From about 26 May 1942 to about 28 July 1942 at Tayabas, Luzon, Philippines, the brutal and cruel

treatment of a road detail of 300 prisoners of war by overworking them, failing to give them adequate food, failing to furnish sanitary facilities, and failing to provide adequate medical care, as a result of which approximately 200 men on this detail died.

34. From about 7 May to 20 May 1942 near Wawa, Batangas, Philippines, the willful and deliberate mistreatment of approximately 250 American prisoners of war, officers and enlisted men, captured at Fort Drum and Fort Frank; by looting, robbing, and stripping them of all their possessions and most of their clothing; by forcing them for a period of several days without rest to perform burdensome labor in repairing a damaged pier, during which time said prisoners of war were denied sufficient food and water and were beaten when forced by exhaustion to slow down in performance of said work; by failing to provide adequate shelter, sanitary facilities and medical attention; by marching and parading said prisoners of war with practically no clothing through Nasugbu, thereby exposing them to public ridicule, humiliation and degradation; as a result of the above mistreatment numerous prisoners of war suffered sickness and disease from which they later died.

35. About 4 August 1942 at Calumpit, Pampanga, Philippines, the brutal execution of 5 prisoners from the Calumpit Bridge detail as reprisal for the escape of Cpl. Gotlieb Neigum another prisoner of war.

36. During May, June and July 1942 the brutal and cruel treatment of a work detail of 300 prisoners of war

sent to Batangas, Philippines, by overworking them, failing to provide adequate and proper medical care, beating, bayoneting and shooting said prisoners as a result of which only 20 survived, and 10 of these survivors died a few weeks thereafter.

37. From about 10 May 1942 to about 29 June 1942, forcing approximately 200 prisoners of war from Camp O'Donnell to work on the Gapan Bridge, Luzon, while ill and unable to so labor, on a starvation diet and under such unsanitary conditions that 37 of said prisoners died from malnutrition, malaria and dysentery.

38. Between 25 April 1942, on various work details on Bataan Peninsula, Philippines, forcing prisoners of war to perform work relating to war operations by the Japanese forces; systematically beating and mistreating prisoners of war and forcing them to work while ill, with the result that only 120 of approximately 500 men assigned to these details survived.

39. On or about 9 January 1942, at Lubao, Pampanga, Philippines, torturing a group of Filipino prisoners of war by kicking, sticking in the face with bamboo poles, refusing to allow them to drink water placed before them; without cause or trial, brutally beating one prisoner by splitting his skull with a ballpin hammer and shooting and killing two other prisoners.

40. On or about 16 February 1942, at Palo, Leyte, Philippines, savagely torturing two Filipino male civilians by hanging them by their hands, beating their nude bodies with thorn branches, and lighting gasoline which

had been poured under their arms and on their genitals.

41. About middle of June 1942 at Tacloban, Leyte, Philippines, the brutal, barbaric and inhuman execution of 4 prisoners of war, Lt. James Bullock, an American, and Cirilo Belicario, Norberto Mendiola, and one Cinco, Filipino soldiers, said execution having been imposed as a punishment for attempting to escape.

42. About 9 May 1942 at or near 646 Wacas Street, San Dionisio, Paranaque, Rizal, Philippines, without cause or trial, the brutal and barbarous bayoneting and killing of 5 unidentified American prisoners of war.

Dated 4 November 1945 /s/ Alva C. Carpenter
ALVA C. CARPENTER
Colonel, JAGD
United States Army

A F F I D A V I T

Before me personally appeared the above-named accuser this 4th day of November, 1945, and made oath and that he is a person subject to military law and that he personally signed the foregoing charge and specifications and further that he has investigated the matters set forth in the charge and specifications and that the same are true in fact, to the best of his knowledge and belief.

/s/ John L. McCrohan
Name

/s/ Captain JAGD
and Branch

- - -

ADDITIONAL SPECIFICATION

That on 6 May 1942 despite the offer of surrender of General Wainwright, the Commanding General of the United States Army Forces on the four (4) fortified Islands in Manila Bay, namely, Corregidor Island, Caballo Island, Carabao Island, and El Fraile Island and despite the fact that the said Forces had laid down their arms and surrendered at discretion, the aforesaid Masaharu HOMMA refused to accept such surrender and the Japanese Forces thereafter fired upon said United States Army Forces as a result of which members of the United States Forces on said four (4) fortified Islands were killed and wounded.

Dated 3 December 1945

/s/ Alva C. Carpenter
ALVA C. CARPENTER
Colonel, JAGD
United States Army

A F F I D A V I T

Before me personally appeared the above-named accuser this 3rd day of December, 1945, and made oath and that he is a person subject to military law and that he personally signed the foregoing additional charge and additional specification and further that he has investigated the matters set forth in the additional charge and additional specification and that the same are true in fact, to the best of his knowledge and belief.

/s/ Harry P. Andrae
Name

/s/ Captain, JAGD, AUS
Rank and Branch

- - -

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

15 December 1945

Referred for trial to Lieutenant Colonel Frank E. Meek, FA,
Chief Prosecutor of the Military Commission appointed by para-
graph 31, Special Orders No. 176, this Headquarters
15 December 1945.

By command of Lieutenant General STYER:

/s/
/t/ C. H. DANIELSON
Major General, USA
Adjutant General

I hereby certify that I have served a copy hereof, together
with a true and complete translation thereof into Japanese, on
the above-named accused this 17 day of December 1945.

/s/ Frank E. Meek

Lt Col, FA

HEADQUARTERS
SUPREME COMMANDER ALLIED POWERS

Before the)	UNITED STATES OF AMERICA
MILITARY COMMISSION)	
convened by the)	
COMMANDING GENERAL)	vs
United States Army Forces,)	
Western Pacific)	Masaharu HOMMA

ADDITIONAL SPECIFICATIONS TO THE CHARGE

43. The brutal shooting on or about 10 December 1941 at Northern College, Vigan, Ilocos Sur, of Buenaventura BELIO, a Filipino, for his refusal to pull down the American and Filipino flags.

44. During April, May and June 1942, the brutal and cruel treatment of a work detail of more than 100 American prisoners of war sent to the Mountain Province, Luzon, Philippines, by overworking them; failing to provide adequate or proper food, clothing, quarters and medical care; beating and mistreating them; requiring them to carry Japanese weapons and ammunitions and engage in warfare against the guerrillas; as a result of which many of said prisoners of war died were killed.

45. On or about 7 May 1942, at Labang, Cotabato, Mindanao, Philippines, did execute Jose Abad SANTOS, a civilian, then the Chief Justice of the Supreme Court, Government of the Commonwealth of the Philippines.

46. Between 24 December 1941 and 15 August 1942, the wanton torture, cruelty and barbarous execution of Filipino civilians without cause or trial at San Bada

College in the City of Manila, Philippines.

47. The widespread, cruel, barbarous and inhuman treatment, the torture and the killing of American and Filipino prisoners of war, American and Filipino civilians and internees and of nationals of various other nations.

Dated: 15 December 1945

/s/ Frank E. Meek
/t/ FRANK E. MEEK
Lt Col FA
Chief Prosecutor

AFFIDAVIT

Before me personally appeared the above-named accuser this 15 day of December 1945, and made oath that he is a person subject to military law and that he personally signed the foregoing additional specifications, and further that he has investigated the matters set forth in the additional specifications, and that they are true in fact, to the best of his knowledge and belief.

/s/ Manning D. Webster
/t/ Manning D. Webster
Captain, JAGD

GENERAL HEADQUARTERS, UNITED STATES ARMY FORCES, WESTERN PACIFIC
APO 707

15 December 1945

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Chief Prosecutor of the Military Commission appointed by para-
graph 31, Special Orders No. 176, this Headquarters
15 December 1945.

By command of Lieutenant General STYER:

/s/
/t/ C. H. DANIELSON
Major General, USA
Adjutant General

I hereby certify that I have served a copy hereof, together
with a true and complete translation thereof into Japanese, on
the above-named accused this 17 day of December 1945.

/s/ Frank E. Meek

Lt. Col., FA

UNITED STATES OF AMERICA)

vs)

MASAHARU HOMMA)

Request for Disapproval
of Finding of Guilty of the
Charge, or in the Alternative,
Recommendation for Clemency

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

and

General of the Army 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 finding of guilty be
disapproved for the reasons stated by the Defense throughout
the trial which appear in the record; in the event that the
finding of guilty is approved, Defense Counsel hereby submits
a recommendation for clemency.

2. The charges against the accused are:

CHARGE

"That Masaharu HOMMA between 10 December 1941
and 5 August 1942 then Lieutenant General of the
Japanese Imperial Army and commander-in-chief in
the Philippines of the armed forces of Japan at war
with the United States of America and its allies did
unlawfully disregard and fail to discharge his duties
as such commander to control the operations of the
members of his command permitting them to commit bru-
tal atrocities and other high crimes against the
people of the United States of America, its allies
and dependencies, particularly the Philippines; and
he, Masaharu HOMMA, thereby violated the Laws of War."

ADDITIONAL CHARGE

"That Masaharu HOMMA, then Lieutenant General of
the Japanese Imperial Army and Commander-in-Chief in
the Philippines of the Armed Forces of Japan at war
with the United States of America and its Allies did
on 6 May 1942 unlawfully refuse to grant quarter to
the Armed Forces of the United States of America and
its Allies in Manila Bay, Philippines, and did there-
by violate the laws of war."

The Commission found the accused "not guilty" of the ad-
ditional charge but "guilty" of the charge. The Commission

did not make findings on any of the specifications under the charge. Originally there were forty-seven specifications, of which eleven were dismissed upon motion of Defense at the conclusion of the Prosecution's case. The Commission's failure to make findings on the remaining thirty-six specifications leaves in doubt the number of specifications on which the finding of guilty of the charge is based. In the opinion of Defense Counsel, the Commission was in error in not making these findings. Since it cannot be determined from the record what crimes were committed by members of his command as a result of the accused's failure to control, it is impossible to determine whether the punishment inflicted is commensurate with the gravity of the crime. Defense Counsel are further of the opinion that the Prosecution failed to prove many of the specifications. It is vital to a proper determination and review of the case to know what specifications were proved in order to establish the pattern and design which the Prosecution asserted was essential to a finding of guilty of the charge.

3. The character of General Homma as shown by the many witnesses clearly indicates that he is not the type of man who would have permitted his troops to commit atrocities had he known of them or had any means in his power to prevent such things from occurring. General Homma was born on Sado Island in 1888. He graduated from the Military Academy in 1907 and from the Staff College in 1916. During World War I he was attached to Lord Plumer's Headquarters in the British Expeditionary Forces in France and later was attached to the Aldershot Regiment in England. In 1922 he was sent to India and was attached to the General Staff of the Indian Army and remained there for three years. From 1930 to 1932 he was military attaché in London. While there he was appointed a member of

the Japanese commission to the Geneva Disarmament Conference. In 1937 he accompanied Prince Chichibu to England to attend the coronation of King George VI. From 1940 to just prior to the outbreak of the war he was Commander-in-Chief of the Formosan Army. In the latter part of November, the 14th Army was hastily organized and he was appointed Commander-in-Chief.

He is a man of wide cultural interests and tastes, is well known as a poet, is a great reader of English literature, and is an authority on the British Empire. The character of the man is well portrayed in the affidavit of Major General F. S. G. Piggott of the British Army, which was introduced in evidence at the trial and is as follows:

"1. Following verbatim affidavit of Maj Gen Francis Stewart Gildercy Piggott sworn before Col R. C. Halse JAG when in office in London text begins:

"1. I first knew Gen. Homma then a Capt. when I was head of Int of 2nd British Army in France in 1918. He was att to Lord Plumer's HQ with other allied officers and during this period acquired a very good knowledge English language. Subsequently knew him he was Asst. Military Attache in London and I was head Far Eastern Sec. at War Office in 1920-1921. Later when Mil. Attach in Tokyo between 1921 and 1926 when serving at War Office between 1927 and 1935 and again when Military Attache at Tokyo from 1936 to 1939 I was in more or less continuous social and official contact Homma was Military Attache in London from 1930-1932 and DMI in Tokyo from 1937 to 1938. In 1939 he was COC Tientsin.

"2. During whole this period formed a close personal friendship with him. I know him strongly physically and mentally determined, broad minded and communicative of independent views, with a number of sentiment, humorous and very good company. He was an ardent supporter of Anglo Japanese alliance and an equally disbeliever in League of Nations. His foreign affiliations were mainly British except as required by his official post when DMI. He had no special Pro-German proclivities, rather the reverse. His reputation in Japanese Army from a military point of view was of highest, quite apart from his well known reputation of being pro-British and an expert on the British Empire. He was in fact considered too pro-British by certain circles

in Japanese Army. He often described his motto, 'Live and let live,' and was of my certain knowledge never associated with extremist militarists.

"3. Homma was to my unofficial knowledge blamed by the General Staff in Tokyo for not taking earlier and more drastic steps against the British concession at Tientsin in 1935 owing to well known weakness of Japanese chain of command and liaison Homma himself visited to front at beginning Chinese war and at his recommendation certain subordinate comds were removed for responsibility in Nanking atrocities Japanese GHQ in China had lost contact with several of said advanced units. This refers specifically to combat units, military police detachments are always independent of any control from local comds.

"4. General Homma's views were independent, moderate, humanitarian and very definitely pro-British the latter even after Anglo Japanese alliance, the termination of which had been a severe disappointment to him.

"Ends. Dated at 6 Spring Gardens London, 14 Jan. 1946. Duly signed and witnessed."

4. The sentence imposed by the Commission, "to be shot to death by musketry," indicates their intention to accord to the accused an honorable death. It denotes that the Commission was not convinced of the personal guilt of the accused. Rather, it denotes clearly and convincingly that in ordering him put to death, it is punishing by proxy the Japanese Army and people. The only offense he was charged with having personally committed in violation of the Laws of War was "the refusal to grant quarter to the Armed Forces of the United States of America and its Allies in Manila Bay, Philippines." On this charge he was acquitted.

5. The record in this case shows that the lack of control with which he was charged was not due to culpable failure on his part. He did not have such control because it was not given to him by his superiors. Such lack of control was inherent in the Japanese Army. He could neither choose nor relieve his officers. His officers and men were inadequately

trained for the operation. The units comprising his Army were constantly changed to meet requirements in other theatres. The "routine inspections" which are made in our Army are not made in the Japanese Army. Imperial General Headquarters was in disagreement with his policy which affected the loyalty of his subordinates and truthfulness of their reports to him. He lacked vital supplies such as food, medicines, and medical installations, for which he made repeated requests. He also lacked transportation. The surrender of Bataan came before he expected it and added to already great difficulties the additional problems of care and feeding of undernourished and sick war prisoners of a number far higher than his staff officers had estimated, in fact exceeding that of his own troops. The unprecedented and early release of prisoners of war is certainly indicative of the deep and serious thought given by General Homma to the problem with which he was gravely concerned. His primary duty was to conduct a difficult campaign, to defeat and capture the American Army and fortresses. As he testified "he had to do with what he had." In judging whether he "did unlawfully disregard and fail to control the operations of the members of his command," the decision should be based not on the control he should have had, not on the control he would have had as the commander of an army of the United States, but on the control he actually had as a lieutenant general of the Japanese Imperial Army, the 14th Army in the Philippines. This point cannot be stressed too strongly. In order to be found guilty of culpable failure to control he must be judged not on the control he should have had but on the control he actually had.

6. The case presented to the Commission gave a distorted picture of conditions and events. This was due to the fact

that witnesses for the Prosecution in many instances grossly exaggerated when testifying and the fact that Filipino civilians would not testify on behalf of the accused because of the intense animosity presently felt in the Philippine Islands against the Japanese. American witnesses were in the United States and therefore unavailable. Facts favorable to the accused could be obtained in most instances only through cross-examination. Much of the evidence was in the form of affidavits which denied the accused this opportunity of cross-examination. These circumstances all combined to destroy the possibility of making the defense to which the accused was entitled.

7. In view of the circumstances described above and in the interest of justice, it is recommended that if the finding of guilty be allowed to stand, that the sentence, "to be shot to death by musketry," be commuted to imprisonment for a term of years.

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Chief Defense Counsel

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Capt. JAGD
Defense Counsel

GEORGE A. FURNESS
Capt. AC
Defense Counsel

FRANK CODER, JR.
Capt. FA
Defense Counsel

ROBERT L. PELZ
1st Lt. CAC
Defense Counsel

LEONARD NATAUPSKY
1st Lt. QMC
Defense Counsel

GENERAL DONOVAN: Is the Accused now ready to enter his plea?

CAPTAIN OTT: If the Commission please, the Accused intends to file motions and pleadings in this case. Counsel for Defense has been unable, due to the shortness of time, to prepare those motions and pleadings, which we intend to file.

This matter has been informally discussed with Colonel Meek of the Prosecution and, if the Commission insists upon a plea, we can enter upon a stipulation, if acceptable to the Commission, and then we can proceed.

COLONEL MEEK: It was the understanding between counsel this morning that it could be stipulated into the record that such preliminary pleadings and motions that counsel for the Accused might desire to file may be presented to the Commission on or before 24 December and that the failure to present at this time will in no way prejudice the Accused's right prior to plea or otherwise.

GENERAL DONOVAN: That is satisfactory.

Masaharu Homma, at this time the Commission will hear your plea to the Charges and specifications which have been read to you.

You may either plead guilty or not guilty.

MAJOR SKEEN: In view of the stipulation between the Prosecution and the Defense, the Accused is now ready to plead to the general issue.

THE ACCUSED: I plead not guilty.

GENERAL DONOVAN: Does the Prosecution have any recommendations to make before the Commission at this time?

COLONEL MEEK: The Prosecution has no recommendations to make unless the Commission would desire a recommendation as to when we shall be ready for trial.

GENERAL DONOVAN: I would like to hear when you would be ready for trial.

COLONEL MEEK: Sir, we have some witnesses to get out of Japan and possibly one or two out of the States. However, we will be ready to go to trial within ten days to two weeks. However, I want to say this, in deference to Defense counsel: I realize how late they got into this case and I appreciate some of the things that they have to do and any reasonable request for delay in this case that is made by Defense counsel, the Prosecution will not resist.

MAJOR SKEEN: Defense counsel feels that in order to prepare an adequate defense and conduct an investigation of these Charges and specifications, we will require a month. Now, this is based on the fact that these charges, the dates in which they occurred, are three years ago. The Defendant has great difficulty remembering specific instances and persons that might prove helpful; 75 percent of the possible witnesses are at present in Japan, some are in Korea, and some in China.

For that reason, sir, in all fairness and justice to the Accused, and in addition the fact that the Defense has just taken over this case a few days ago, we feel that a month is not at all an unreasonable request.

GENERAL DONOVAN: Do you have anything else?

MAJOR SKEEN: No, sir.

GENERAL DONOVAN: The Commission will be very glad to assist the Defense by obtaining additional Defense counsel, if necessary, in order to expedite this case. If this case goes to trial during the first part of January and the Prosecution begins to present the evidence, additional time will be available to the Defense to gather together witnesses and other material.

The Commission will now recess and reconvene on the 3rd of January, 1946, at 8:30 a. m., at the High Commissioner's Residence, Dewey Boulevard, Manila, or on such other date or at such other place as the Presiding Officer may hereafter determine, for the purpose of proceeding with the trial of Masahura Homma.

MAJOR SKEEN: May the Defense say one thing more, sir?

GENERAL DONOVAN: Yes.

MAJOR SKEEN: It isn't a question of additional counsel. It is the tremendous amount of research and the tremendous amount of people that must be interviewed before we can even start. That was the reason for requesting at least a month.

GENERAL DONOVAN: I understand that.

The Commission will now be in recess and reconvene on the 3rd of January.

(Whereupon, at 0850 hours, 19 December 1945, a recess was taken until 0830 hours, 3 January 1946.)