

## The Case of General Yamashita: A Memorandum (continued)

. . . *The Case of General Yamashita: A Memorandum* was written in November 1949 by U.S. Army Brigadier General Courtney Whitney to refute the arguments presented in a book written, but not at that time published, by one of Yamashita's six defense counsels, Captain A. Frank Reel. In support of its rebuttals to Reel's book, the memorandum cites as authorities the Supreme Court opinion, *In re Yamashita*, 327 U.S. 1 (1946); the United Nations War Crimes Commission *Law Reports of Trials of War Criminals*; and the Judge Advocate review of the record of trial, all of which are included as appendices to the memorandum.

The memorandum takes exception to Capt. Reel's use of the dissenting opinions in the *Yamashita* decision to "support his post-judicial contention that Yamashita was irregularly tried and unjustly executed." It affirms the three major findings of the Court: the military commission which tried and convicted Yamashita was lawfully created and lawfully convened; the allegations of the charge against Yamashita adequately alleged a violation of the laws of war; and the regulations governing the procedures to be followed by the commission were not in conflict with the Articles of War and did not deprive Yamashita of due process. The memorandum notes that General MacArthur, who served as the final reviewing authority prior to ordering the execution of sentence, supported the majority opinion of the Court. The memorandum includes in its entirety General MacArthur's statement of record enumerating his reasons for approving the military commission's judgment.

The commentary written by the United Nations War Crimes Commission discusses at length the *Yamashita* decision, focusing on the questions of international law which were involved in that case. Specifically, this document addresses "the legality of the trial of war criminals after the termination of hostilities; the finding that an alleged war criminal is not entitled to the protection of the Geneva Prisoner of War Convention relating to trial; the types of evidence admitted in war crime trial proceedings; the stress placed by the Commission on the need for expeditious procedure; and the responsibility of a commander for offences committed by his troops." The *Memorandum* finds the commentary's "discussion of the validity of that part of the regulations governing the procedure to be followed by the military commission in the admissibility of evidence" to be of particular interest.

The memorandum provides a lengthy recitation of the "specifications to the charge on which Yamashita was tried, convicted, and executed," and states that it "established a pattern of the . . . misconduct of the troops under Yamashita's command." The memorandum also quotes extensively from the Judge Advocate General's review of the trial record to illustrate "the voluminous evidence before the military commission pointing to full knowledge by the high command of this reign of terror instituted against non-combatants and prisoners over a wide area." The Judge Advocate's review of the trial concluded that the military commission was legally constituted, and had jurisdiction of Yamashita and the offense with which he was charged. It also found that the evidence

in that case supported the finding of guilty, that the trial record disclosed no errors in violation of the rights of the accused, and that the sentence was legal.