

and Rutledge to produce dissenting opinions at the U.S. Supreme Court in the immediate aftermath (February 11, 1946), but they amounted to no more than restatements of criticisms they had already raised with respect to the Yamashita Trial, in a much-abridged form.¹⁸ As for the Kuroda Trial, contemporaneous reporting in Japan and the Philippines may have kept the public abreast of the court proceedings and their outcomes, but the trial itself failed to generate interest in systematic analyses of legal doctrinal issues or the court's factual findings.¹⁹ Unlike the case of Yamashita, the two trials barely made any mark in the case-law literature.

Recent progress in studies of the Philippine war crimes trials nevertheless suggests that imbalances in the existing scholarship are being addressed. Nagai Hitoshi's (2010) *Firipin to tai-Nichi senpan saiban, 1945–1953* (The Philippines and war crimes trials against the Japanese, 1945–1953) offers a comprehensive account of the institutional and political history of Philippine involvement in war crimes prosecutions, covering the period from the time of initial war crimes investigations and policy formation by the U.S. authorities to the release of convicted war criminals by the Philippine government. Sharon Chamberlain's (2010) "Justice and Reconciliation: Postwar Philippine Trials of Japanese War Criminals in History and Memory" takes a step further, delving into the transcripts of Philippine court proceedings to bring to light an array of procedural, legal, and factual questions that arose from the Philippine Manila trials. Taking its cue from these cutting-edge research pieces, this chapter will attempt a comparative study of the three high-profile trials in order to take a fresh look at the Yamashita precedent and its repercussions in the Far Eastern war crimes trials.

This chapter begins by reconstructing the history of the Japanese invasion of the Philippines on the basis of evidentiary materials presented at the three cases. It will then turn to the record of the Yamashita Trial and the U.S. Supreme Court opinions in order to determine the nature of the Yamashita precedent. An analysis of the records of the Honma Trial and the Kuroda Trial will ensue to elucidate differences and similarities on the prosecution's cases, the defense arguments, and the courts' findings.

WAR IN THE PHILIPPINES

"Now, using the map which is on the board, will you outline the essential elements of your campaign in the Philippines?"²⁰ Prompted during direct examination by Maj. Gen. John Skeen of his defense counsel, Honma began recounting in gripping detail the invasion of the Philippines that he carried out some four years ago. While his military campaigns were ultimately successful, Honma appeared to relive in the courtroom the frustration, bewilderment, and helplessness that he had experienced at various turns of event – botched landings, protracted battles, high casualties among his troops, and the enemy forces' unpredictable decisions on surrender.

The war in the Philippines began with the deployment of Japanese airpower, followed by the ground forces' land invasion of Luzon that Honma directed first from his headquarters in colonial Taiwan and subsequently on the island of Luzon itself.²¹ "During all my campaign in the Philippines, I had three critical moments," Honma said as he set out in fluent English²² the outline of his war story, "and this was number one."²³ By "this" he was referring to the landing of the main forces on December 22, 1941, at Lingayen Bay, west of central Luzon, coordinated with the landings of three detachments at north and southeastern approaches to Luzon Island.²⁴ Quite unexpectedly, transport boats at Lingayen got caught in the sand when taking the first party of infantry troops to the shore, leaving the rest stranded on board the mother ship. The fumbled landing turned out to be a comparatively minor glitch but this incident rattled Honma, who worried at the time that "if we were counter-attacked we were almost helpless."²⁵ He managed to free the transport ships after the loss of one day and directed his troops to push southward as planned.

Honma's forces made a swift advance notwithstanding enemy's stiff resistance and reached the outskirts of Manila by January 1, 1942. This was made possible thanks largely to the 48th Division under his command, one of the only two divisions in the entire Imperial Japanese Army in those years with ample motor vehicle equipment, Honma explained.²⁶ Within days, however, this division was taken out of the Philippines by the order of the Imperial General Headquarters at Tokyo so that it could be utilized in the concurrent invasion of Java. Honma was given as a substitute an ill-trained, ill-equipped brigade that was originally meant for garrison duty and not for combat.²⁷ By the time of the Japanese descent on the Philippine capital, MacArthur, commanding the U.S. Army Forces Far East (USAFPE), had declared Manila an open city and withdrawn his troops to Bataan Peninsula wherein to continue the defense of the Philippines.²⁸ Based on this information, Honma headed off to Bataan with the main forces to engage the enemy troops while leaving the administrative matters of the newly occupied capital city with his deputy chief of staff, Lt. Gen. Hayashi Yoshihide.²⁹ Hayashi remained in Manila thereafter to serve concurrently as director of the Military Administration Section of the 14th Army.

The ensuing Battle of Bataan proved to be an arduous, long-drawn-out battle for Honma, where "the second one" of the three critical moments³⁰ in his Philippine campaign occurred. His forces were confronted with formidable resistance by the enemy. The 14th Army sustained heavy casualties due to "very powerful and accurate" artillery fire³¹; lost two battalions that were sent behind the enemy lines but that went missing "without a trace"³²; and nearly suffered the complete loss of a third battalion, which was dispatched to locate the missing ones. According to the testimony of Col. Horiguchi Shūsuke, formerly chief of the Medical Section of the 14th Army, the total Japanese casualties in connection with the first Bataan campaign amounted to 2,700 deaths, 4,050 injured, and 15,500 sick cases suffering mainly from dysentery and malaria.³³

Instead of having victory in sight, Honma by mid-February was compelled to withdraw his troops.³⁴ There was a rumor of the death of Honma at the time – “committal of suicide”³⁵ – on account his underperformance to that point in the Bataan campaign. “I could not ask for reinforcements from Tokyo,” Honma explained to the court, since “it isn’t considered in the Japanese Army for the Commander-in-Chief to ask for reinforcements; he must do with what he was given.”³⁶ Honma further indicated that he was under tremendous pressure those days because “by the time – at the end of the first battle of Bataan, all other theaters of war – I mean, that is, the Dutch East Indies and the Malayan campaign – those campaigns came to an end while my campaign was delayed, and I knew that Tokyo was displeased with the tardiness of the progress of my campaign in the Philippines.”³⁷ By this statement, he was referring to achievements of fellow army officers, Lt. Gen. Imamura Hitoshi of the 16th Army and Lt. Gen. Yamashita Tomoyuki of the 25th Army, who secured Batavia and Singapore, respectively, in spite of resistance from numerically superior enemy forces. Field Marshal Terauchi Hisaichi of the Southern Army – to which the 14th Army was then subordinate – soon decided to provide Honma with an additional division and three detachments, so that the latter could reorganize his forces and prepare for another offensive.³⁸ It was now scheduled to resume on April 3, 1942.

The second Bataan campaign paid its dividend rather quickly. Honma was anticipating a month-long battle at the least,³⁹ but Maj. Gen. Edward P. King, who commanded the forces defending Bataan, communicated on April 9 his readiness to surrender his troops. A total of about 70,000 American and Filipino soldiers – in place of 40,000 as had previously been estimated by his intelligence officer, so Honma informed the court – came into Japanese custody.⁴⁰ War being still in progress, Honma had these prisoners of war evacuated to the rear to an internment camp being prepared up north at Capas in Tarlac Province, in accordance with plans developed prior to the commencement of the second Bataan campaign.⁴¹ (The infamous Bataan Death March occurred during the transfer of surrendered soldiers, as discussed shortly.) Honma then refocused on the remaining enemy forces under the command of Lt. Gen. Jonathan Mayhew Wainwright – reportedly acting as successor of MacArthur (who had by then left the Philippines to take up a new command in Australia) – and his headquarters on the small, tadpole-shaped island of Corregidor south of the Bataan Peninsula. At the same time, Honma ordered the Nagano Detachment, one of additional detachments that joined him in the second Bataan operation, to go to the Visaya District⁴² – the island group that consisted of Bohol, Cebu, Leyte, Negros, Panay, and Samar – to engage the USAFFE in the southern region. As for Mindanao, another USAFFE-controlled island, a detachment under command of Imamura of the 16th Army in the Dutch East Indies was freed up to take charge.⁴³

The “third critical moment” came at Corregidor in early May when Honma ordered his forces on Bataan to put into effect the planned military invasion.

This was originally scheduled to begin on April 25 but was postponed to May 5 due to delays in the arrival of landing boats and an outbreak of malaria.⁴⁴ Certain missteps were made at the start of the nighttime invasion on Day 1, exposing the Japanese landing troops to enemy torpedoes and heavy fire from artillery and machine guns. No news of progress was reaching his headquarters, and Honma “did not have a wink” that particular night.⁴⁵ The following morning, staff officers told him of the botched landing operation and the loss of thirty-one boats – more than half of the boats at Honma’s disposal. Recalling his state of mind on that occasion, Honma told the court: “I thought, ‘My God! I have failed miserably in this assault.’”⁴⁶ Agony was not to last too long, however. Wainwright initiated a meeting with Honma the same day to indicate his readiness to turn over his troops at the four fortified islands in Manila Bay, including Corregidor.⁴⁷ This Honma refused to accept, on grounds that his demand was surrender of the entirety of USAFFE in the Philippine Islands, not part of it. He ordered his men to resume attacks on Corregidor. On the following morning, Honma received definitive information that “General Wainwright came to the decision that he will surrender all of his troops under his command.”⁴⁸

With the Battle of Bataan and the Battle of Corregidor finally over, Honma on May 9 moved his headquarters from Lamao, southeastern Bataan, to the capital city, Manila,⁴⁹ to begin transitioning from being an operational commander to an occupation commander. The primary task for him was to establish a working relationship with the existing political authorities of occupied Philippines so as to consolidate Japan’s control over the island nation, and at the same time to continue with unfinished pacification campaigns at pockets of resistance in the outlying areas.⁵⁰ The Philippines would be used thereafter for rear duties in support of the Japanese war effort elsewhere, serving as a major hub for transportation of Japanese troops, labor, raw materials, and other resources needed at diverse locations in Japanese-occupied territories throughout Asia and the Pacific region. Meanwhile, concrete steps would have to be taken in immediate weeks to ameliorate the conditions of prisoner-of-war internment at Camp O’Donnell. Honma knew based on reports from subordinate officers that the American and Philippine prisoners of war there were dying at an alarming rate.

At the time of surrender on April 9, defenders of Bataan were already in dire physical state, many suffering from malnutrition, exhaustion, malaria, injuries, and various other ailments resulting from these conditions. Some 200 or so officers transported in motor vehicles aside,⁵¹ all surrendered soldiers were made to join waves of marchers to get to the location of internment, under the supervision of Japanese sentries. They were first routed to the “concentration area” or the “assembly point” at Balanga on the eastern coast of central Bataan,⁵² and continued marching northward – passing through Orani, Hermosa, and Lubao – until they reached San Fernando, Panpanga. Thereupon they were made to take a four-hour train ride in overcrowded

boxcars to Capas, Tarlac Province. After the final stretch of marching, they were taken in at Camp O'Donnell. Many died during the marches. Summary execution is believed to have taken place, too, of a group of Filipino officers and noncommissioned officers – between 350 and 400 of them – when being evacuated through the Bagac-Balanga route (cutting across Bataan Peninsula from west to east), on about April 12. The only two eyewitnesses and survivors of the massacre – Capt. Pedro L. Felix, of the Inspector General Service of the Philippine Army, and Maj. Eduardo T. Vargas, of the Engineer Corps of the Philippine Army – took the witness stand to offer oral evidence.⁵³

The attrition rate of the Bataan Death Marchers remained very high at Camp O'Donnell. Inadequacy in food supplies, water, medicine, medical facilities, shelters, and sanitation facilities was commonplace during the marches, and they persisted at the camp with no improvement. Harsh treatment personally promoted by the first camp commander, Capt. Tsuneyoshi Yoshio, added to the hardship of prisoners of war. Nicknamed “Little Napoleon,”⁵⁴ Tsuneyoshi was remembered for having greeted every new group of prisoners of war with a speech emphasizing that they were mere “captives” and not “prisoners of war” because his government “did not acknowledge the existence of such a thing as prisoners of war.” The prisoners were permitted to live “only through the kindness of the Emperor,” Tsuneyoshi purportedly told them.⁵⁵ According to the record kept by Col. Charles S. Lawrence, Maj. Gen. King's staff officer, the total number of surrendered persons at Bataan was “approximately 74,800,” about 10,500 of which being Americans. The total number of Americans who reached Camp O'Donnell was 9,271 Americans and “the difference [of about 1,229] disappeared on the march out of Bataan.” As for the remainder of surrendered individuals, “between 46,000 and 48,000 Filipinos reached O'Donnell,” thus leaving between 16,300 and 18,300 unaccounted for.⁵⁶ The death rate at O'Donnell diminished beginning in the middle of June 1942 when Capt. Tsuneyoshi was replaced by a Col. Itō, a much more capable appointee, who brought about a measure of improvement to internment conditions.⁵⁷ Overcrowding was alleviated, too, as some prisoners of war were relocated elsewhere while some others were released on parole. Nevertheless, the substandard level of prisoner-of-war internment persisted in occupied Philippines for the duration of the war.

The likelihood of Honma's success as occupation commander, meanwhile, did not appear promising, as his occupation forces failed to retain some of the top political leaders of the preexisting Philippine government. President Manuel L. Quezon had gone into exile before the Japanese capture of the capital city. On the eve of his departure, Quezon appointed as presidential delegate Justice Jose Abad Santos Sr., chief justice of the Philippine Supreme Court and concurrently acting secretary of Finance, Agriculture, and Commerce.⁵⁸ Santos was unable to discharge his duty in full, however, as the Japanese expeditionary force in Cebu, the Kawaguchi Detachment, stumbled upon

him on April 9, 1942, and took him in its custody. A month later on May 7, Judge Santos was executed by a firing squad reportedly for his refusal to cooperate with the Japanese occupation authorities.⁵⁹ The record of the Honma Trial indicates that execution was carried out at the discretion of a Lt. Col. Kawakami, director general of military administration in the Cebu area. He apparently took the time neither to inform nor to seek approval from his military superiors regarding the execution.⁶⁰

In the absence of President Quezon, the Military Administration Section of the 14th Army set up a caretaker government – the Executive Commission – with a known Filipino nationalist, Jorge B. Vargas, as its chairman.⁶¹ Honma appears to have developed a rapport with some members of the Executive Commission, and he particularly came to know “Mr. Vargas and Doctor [Jose] Laurel rather intimately,” as Honma himself attested during the trial.⁶² Whatever personal friendship may have evolved between him and some of the Philippine nationalist leaders, it was cut short when Honma was suddenly recalled to Japan and left the Philippines, on August 5, 1942.

The 14th Army had a rocky start with the Philippine general public, too. The aerial bombing of Manila in late December 1941 preceding the entry of the Japanese ground troops – which occurred despite the fact that MacArthur had already declared it an open city – could be construed as anything but a friendly gesture. As soon as Japanese troops set foot in Manila, the Military Administration Section of the 14th Army made clear to city residents the policy of zero tolerance of popular resistance against Japanese rule. A set of warnings from the Japanese military authorities adorned the front page of the local newspaper, *The Tribune* (Manila), in the morning edition on January 5, 1942. The top column of the front page (which the prosecution presented in evidence during the trial of Honma) read in full as follows:

WARNING

1. Anyone who inflicts, or attempts to inflict, an injury upon Japanese soldiers or individuals shall be shot to death;
2. If the assailant, or attempted assailant, can not [*sic*] be found, we will hold ten influential persons as hostages who live in and about the streets of municipalities where the event happened;
3. Officials and influential persons shall pass this warning on to your citizens and villages as soon as possible and should prevent these crimes before they happen on your own responsibilities;
4. The Filipinos should understand our real intentions and should work together with us to maintain public peace and order in the Philippines.

COMMANDER OF JAPANESE LANDING FORCES⁶³

Honma attested to having no personal knowledge of the release of these warnings and suspected that the Bureau of Publicity of the 14th Army’s Military Administration Section issued them without his approval, as “it was one of the

bad habits of the Japanese troops that they use the name of the commander-in-chief when they wanted to put some importance on a statement of that kind.”⁶⁴ That said, Honma could agree that “some kind of warning must have been needed at that time in Manila,” even though the actual warnings in the *Tribune* were worded “much stronger than I might have wished.”⁶⁵

The residents of Manila soon learned that these warnings were not to be made light of, as the *kenpeitai*, or the Japanese military police force, were ready to give teeth to the 14th Army’s zero-tolerance policy on Philippine resistance.⁶⁶ The *kenpeitai* set up its headquarters at Fort Santiago, a historic prison facility from the Spanish colonial era,⁶⁷ and used the prison compound as the main detention and interrogation center for those individuals whom it deemed threats to the Japanese war effort and military administration. Records of three Manila trials show that throughout Japanese military occupation, detainees were kept in shockingly filthy cells with little or no proper medical attention, food, water, or other minimum daily necessities for survival. Moreover, *kenpeitai* officers took the detainees out of the cells from time to time in order to extract confessions of the crimes they may or may not have committed. The *kenpeitai*’s standard torture methods were applied freely on such occasions: “water treatment,”⁶⁸ electrocution, suspension from the ceiling by the wrists, cigarette-induced burning, knee splits, kicking, and beating with hands, clubs, whips, or other instruments. Some detainees at Fort Santiago were later released broken in body and spirit, while some others never returned alive. As an increasing number of public figures, family members and friends, and other personal acquaintances were taken behind the walls of Fort Santiago, the Philippine public came to regard it as the symbol of the fickle and vicious character of Japanese military justice.⁶⁹

Among victims of the *kenpeitai* terror regime in early months were eight members of the Chinese consulate general at Manila: Clarence Kwangson Young, consul general representing the Republic of China, and seven other officials at the consulate. They fell under *kenpeitai* arrest on January 5, 1942, and were temporarily incarcerated at Fort Santiago in late March and early April on suspicions of their having connections with financial support by expatriate Chinese to the Chiang Kai-shek Government and the anti-Japanese boycott movement.⁷⁰ They were taken out of the fort on April 17, 1942, and summarily executed at North Cemetery, Santa Cruz, Manila.⁷¹ This particular episode of killing was carried out without publicity (and apparently without Honma’s knowledge⁷²). The *kenpeitai* authorities refused to provide the wives of consulate members with information concerning the whereabouts of their husbands. The wives were only able to determine conclusively the fate of their spouses after the passage of nearly three and a half years. On June 14, 1945, they witnessed at North Cemetery the exhumation of the bodies of their late husbands, and identified the remains and personal affects.⁷³

Other non-Filipino civilians who had taken up residence in the Philippine Islands were not out of harm’s way either. Predominantly Americans but also

including some non-American nationals, they were rounded up by the invading Japanese ground troops and placed at hastily established internment camps, initially at Camp John Hay in Baguio (central Luzon), the University of Santo Tomas (in the capital city), and Camp Bacolod (Negros Island), and later at other locations as well. The Japanese occupation authorities at first assumed no institutional responsibility whatsoever for the provision of food, clothing, medical supplies, or any other equipment necessary for the sustenance of camp life. Consequently, internees were left with few options but to rely on individual purchases, aid from Filipino friends, and Red Cross supplies. According to Honma's court testimony, the Foreign Relations Section in the 14th Army's Military Administration Section theoretically took charge of all matters concerning the handling of civilian internees. But he also understood from his subordinates' reporting those days that "they [internees] wanted to live in their own way under their own expense."⁷⁴ This state of affairs with varying degrees of improvement and aggravation persisted at civilian internment camps for the duration of the Japanese occupation of the Philippines.

With Honma's career as occupation commander cut short in early August 1942, the burden of improving the image of Japanese military authorities in the eyes of the Philippine public on the one hand and of strengthening the Japanese ties with the Philippine political leaders on the other fell on the shoulders of Tanaka Shizuichi, Honma's successor as commanding general of the 14th Army. But guerrilla activism was on the rise from the start of Tanaka's tenure, and he "had hardly any time to warm his seat [*seki no atata-maru hima mo nai*] as he himself went about leading tours of inspection and directing military expeditions," according to *Senshi sōsho: 2. Hitō kōryaku sakusen* (War history series: Vol. 2. The invasion of the Philippine Islands), the Japanese official history of the Philippine invasion.⁷⁵ Even so, Tanaka could not bring guerrillas under control due to diminishing fighting capabilities of the 14th Army. The prolongation of the Guadalcanal campaign required him to give up some of his best combat units and equipment for redeployment in the South Pacific. This, in turn, cut into the 14th Army's ability to tackle continuing security problems in occupied Philippine islands. Guerrilla fighters, for their part, were emboldened by the prospect of the U.S. armed forces' eventual return and by the simmering popular discontent and resistance against Japanese rule.⁷⁶

Kuroda took up where Tanaka left off shortly after the assumption of command of the 14th Army, in May 1943. He resumed military campaigns against guerrillas in the outlying areas of Cebu, Mindanao, Negros, and Panay as well as within the island of Luzon. Pacification campaigns during Kuroda's tenure peaked in the months of July, August, and September 1943, when he "wanted to suppress guerrilla activities as early as possible and prior to the grant of Philippine independence."⁷⁷ By this statement (made during his court testimony), Kuroda was referring to Philippine "independence" that took effect in October 1943 in accordance with the promise previously made by Prime

Minister Tōjō Hideki on behalf of the Government of Japan. In its immediate aftermath, Kuroda ordered suspension of antiguerrilla military expeditions in the Luzon and Mindanao areas for three months, and also in the Visaya District in the months of January and February 1944. Its purpose was to let guerrilla fighters have a window of opportunity to surrender and to be reintegrated into the newly independent Philippines. “However, not all guerrillas came down during those months,” Kuroda explained to the court, and “after the lapse of 3 months, it was again left to the discretion of the respective units to conduct punitive expeditions against guerrillas.” The antiguerrilla pacification campaigns gained a greater sense of urgency in the spring of 1944 when the U.S. counterinvasion was turning into an imminent reality. In April, Field Marshal Terauchi of the Southern Army ordered Kuroda to carry out military expedition against guerrillas in Guimaras Island, in the south off Panay, “where the combined Japanese fleet was expected to anchor.”⁷⁸ When Kuroda’s tenure as occupation commander in the Philippines ended in September 1944, he left the island nation in a much more volatile condition than it was during his predecessors’ tenures.

Yamashita arrived in Manila on October 9, 1944, to assume his new assignment as commander of the 14th Area Army. The Philippine Islands by then were a hotbed of guerrilla activism. “Among the Filipinos, there were considerable anti-Japanese feelings that existed,”⁷⁹ Yamashita told the court when testifying in his behalf, and “after the American landings on Leyte, the guerrilla actions increased more and more, and it became so that they interfered with military operations at quite a few places.”⁸⁰ There was also a foiled attempt in the middle of November 1944 to blow up Yamashita’s headquarters at Fort McKinley, south of Manila, by setting up dynamite in the basement of the officer recreation room.⁸¹ This episode pointed to audacity of the Philippine resistance movement not seen in the early years of Japanese military occupation. The central Japanese government attempted to reverse the trend by cultivating pro-Japanese Filipinos by way of Gen. Artemio Ricarte, an old-time Philippine nationalist who had been in self-imposed exile in Japan to oppose American colonial rule in the Philippines. Ricarte formed a patriotic league, Makapili, purportedly to promote “a spiritual movement” of Philippine patriots and to work with the Japanese.⁸² It was already a lost cause, however, in a country where the vast majority of the population stood firmly against the continuation of Japanese military rule.

What was left for Yamashita in those circumstances was to prepare the 14th Area Army for a protracted war at two fronts: one against guerrillas throughout the Philippine Islands, and the other against the U.S. assault forces. With respect to the former, he issued stern orders to his subordinates that guerrilla fighters be suppressed. He testified: “On October 11 of last year [1944], at a conference with the chief of staff, we discussed this matter, and I said that armed guerrillas, those guerrillas carrying weapons, must be suppressed by means of military action.”⁸³ Meanwhile, he focused his attention

on the defense of the Philippines in preparation for the impending landing of the U.S. assault forces.

The American invasion of Leyte began within nine days of Yamashita's arrival at Manila, allowing him no time to make a tour of inspection to familiarize himself with the position of vast military forces under his command. Field Marshal Terauchi ordered Yamashita to counter the enemy at Leyte although the original war plan was to focus on the defense of Luzon Island. Leyte was soon lost, necessitating Yamashita to gather up the troops at his disposal to prepare afresh for defensive war back in Luzon.⁸⁴ This he carried out with great difficulty. The forces under his command by then were a disorganized and ill-equipped lot. To complicate the matter, poor communication caused by incessant attacks from superior American aerial and ground forces, and from guerrilla fighters, made it impossible for Yamashita to stay in close contact with subordinate units. "When the Americans landed on Leyte, Mindoro and Luzon the situation came to a point where our communications were completely disrupted," so Yamashita informed the court.⁸⁵ He withdrew his headquarters from Fort McKinley to Baguio in the northern part of Luzon in order to concentrate the troops in the mountainous areas as a delaying tactic. Numerous instances of atrocity occurred over the course of the troop withdrawal and during the defensive battles for the remainder of the war in the Philippines. This included the Rape of Manila in February 1945, an instance of mass atrocity that took place in the capital city in the immediate weeks after the U.S. land invasion.

Yamashita came out of his hideout in Baguio on September 3, 1945, to formally surrender. In a month, he was taken before the U.S. military commission at Manila to be charged as a war criminal. The trial promptly began.⁸⁶

THE YAMASHITA PRECEDENT

Yamashita faced a single charge of "willful disregard and failure to discharge his duty" to take control of troops under his command, thereby "permitting" his subordinates to commit war crimes. A total of 123 particulars enumerated concrete instances of atrocity for which he was held accountable. Each particular generally fell under one of the following categories of offense, in accordance with locations of the crimes and types of victims involved: (1) burning, pillage, looting and destruction of property, and killing, massacre, rape, attempted rape,⁸⁷ mutilation, and other forms of mistreatment of the civilian population over the course of the Battle of Manila; (2) destruction of property, killing, massacre, and extermination of the civilian population at locations other than Manila between October 1944 and May 1945⁸⁸; (3) *kenpeitai*-related atrocities, including "brutal mistreatment, starvation, torture, wounding, maiming, burning alive, massacre and killing, without cause or trial, of more than 4000 unarmed noncombatant civilians" at Fort Santiago in February 1945⁸⁹; (4) general mistreatment and specific instances