

EN BANC

[G.R. No. L-129. December 19, 1945.]

TOMOYUKI YAMASHITA, *petitioner*, **vs.** **WILHELM D. STYER**,
Commanding General, United States Army Forces, Western Pacific,
respondent.

DECISION

MORAN, C. J :

Tomoyuki Yamashita, erstwhile commanding general of the 14th army group of the Japanese Imperial Army in the Philippines, and now charged before an American Military Commission with the most monstrous crimes ever committed against the American and Filipino peoples, comes to this Court with a petition for *habeas corpus* and prohibition against Lt. Gen. Wilhelm D. Styer, Commanding General of the United States Army Forces, Western Pacific. It is alleged therein that petitioner after his surrender became a prisoner of war of the United States of America but was later removed from such status and placed in confinement as an accused war criminal charged before an American Military Commission constituted by respondent Lieutenant General Styer; and he now asks that he be reinstated to his former status as prisoner of war, and that the Military Commission be prohibited from further trying him, upon the following grounds:

(1) That the Military Commission was not duly constituted, and, therefore, it is without jurisdiction;

(2) That the Philippines cannot be considered as an occupied territory, and the Military Commission cannot exercise jurisdiction therein;

(3) That Spain, the "protecting power" of Japan, has not been given notice of the impending trial against petitioner, contrary to the provisions of the Geneva Convention of July 27, 1929, and therefore, the Military Commission has no jurisdiction to try the petitioner;

(4) That there is against the petitioner no charge of an offense against the laws of war; and

(5) That the rules of procedure and evidence under which the Military Commission purports to be acting denied the petitioner a fair trial.

We believe and so hold that the petition for *habeas corpus* is untenable. It seeks to discharge of petitioner from confinement but merely his restoration to his former status as a prisoner of war, to be interned, not confined. The relative difference as to the degree of confinement in such cases is a matter of military measure, disciplinary in character, beyond the jurisdiction of civil courts.

Neither may the petition for prohibition prosper against Lt. Gen. Wilhelm D. Styer. The Military Commission is not made party respondent in this case and although it may be acting, as alleged, without jurisdiction, no order may be issued in these proceedings requiring it to refrain from trying the petitioner.

Furthermore, this Court has no jurisdiction to entertain the petition even if the commission be joined as respondent. As we have said in *Raquiza vs. Bradford* (pp. 50, 61, *ante*), ". . . an attempt of our civil courts to exercise jurisdiction over the United States Army before such period (state of war) expires, would be considered as a violation of this country's faith, which this Court should not be the last to keep and uphold." (Parenthesis supplied.) We have said this in a case where Filipino citizens were under confinement, and we can say no less in a case where the person confined is an enemy charged with the most heinous atrocities committed against the American and Filipino peoples.

True that the rule was made applicable in time of war, and there is a conflict of opinion as to whether war has already terminated. War is not ended simply because hostilities have ceased. After cessation of armed hostilities, incidents of war may remain pending which should be disposed of as in time of war. "An important incident to a conduct of war is the adoption of measures by the military command not only to repel and defeat the enemies but to seize and subject to disciplinary measures those enemies who in their attempt to thwart or impede our military effort have violated the law of war." (*Ex parte Quirin*, 317 U. S., 1; 63 Sup. Ct., 2.) Indeed, the power to create a Military Commission for the trial and punishment of war criminals is an aspect of waging war. And, in the language of a writer, a Military Commission "has jurisdiction so long as a technical state of war continues. This includes the period of an armistice, or military occupation, up to the effective date of a treaty of peace, and may extend beyond, by treaty agreement." (Cowles, *Trial of War Criminals by Military Tribunals*, American Bar Association Journal, June, 1944.).

Upon the other hand, we have once said (*Payomo vs. Floyd*, 42 Phil., 788) — and this is applicable in time of war as well as in time of peace — that this Court has no power to review upon habeas corpus the proceedings of a military or naval tribunal, and that, in such case, "the single inquiry, the test, is jurisdiction. That being established, the habeas corpus must be denied and the petitioner remanded. That wanting, it must be sustained, and the petitioner discharged." (*In re Grimley*, 137 U. S., 147; 11 Sup. Ct., 54; 34 Law. ed., 636.) Following this rule in the instant case, we find that the Military Commission has been validly constituted and it has jurisdiction both over the person of the petitioner and over the offenses with which he is charged.

The Commission has been validly constituted by Lieutenant General Styer by order duly issued by General Douglas MacArthur, Commander in Chief, United States Army Forces, Pacific, in accordance with authority vested in him and with radio communications from the Joint Chiefs of Staff, as shown by Exhibits C, E, G, and H, attached to the petition. Under paragraph 356 of the Rules of Land Warfare, a Military Commission for the trial and punishment of war criminals must be designated by the belligerent. And the belligerent's representative in the present case is none other than the Commander in Chief of the United States Army in the Pacific. According to the Regulations Governing the Trial of War Criminals in the Pacific, attached as Exhibit F to the petition, the "trial of persons, units, and organizations accused as war criminals will be by Military Commissions to be convened by or under the authority of the Commander in Chief, United States Army Forces, Pacific," Articles of War Nos. 12 and 15 recognize the "Military Commission" appointed by military command as an appropriate tribunal for the trial and punishment of offenses against the law of war not ordinarily tried by court martial. (*Ex parte Quirin*, *supra*.) And this has always been the United States military practice at least since the Mexican War of 1847 when General Winfield Scott took the position that, under the laws of war, a military commander has

an implied power to appoint and convene a Military Commission. This is upon the theory that since the power to create a Military Commission is an aspect of waging war, Military Commanders have that power unless expressly withdrawn from them.

The Military Commission thus duly constituted has jurisdiction both over the person of the petitioner and over the offenses with which he is charged. It has jurisdiction over the person of the petitioner by reason of his having fallen into the hands of the United States Army Forces. Under paragraph 347 of the Rules of Land Warfare, "the commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

As to the jurisdiction of the Military Commission over war crimes, the Supreme Court of the United States said:

"From the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals. By the Articles of War, and especially Article 15, Congress has explicitly provided, so far as it may constitutionally do so, that military tribunals shall have jurisdiction to try offenders or offenses against the law of war in appropriate cases. Congress, in addition to making rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals." (*Ex parte Quirin*, 317 U. S., 1, 27-28; 63 Sup. Ct., 2.)

Petitioner is charged before the Military Commission sitting at Manila with having permitted members of his command "to commit brutal atrocities and other high crimes against the people of the United States and of its allies and dependencies, particularly the Philippines," crimes and atrocities which in the bills of particulars, are described as massacre and extermination of thousands and thousands of unarmed noncombatant civilians by cruel and brutal means, including bayoneting of children and raping of young girls, as well as devastation and destruction of public, private, and religious property for no other motive than pillage and hatred. These are offenses against the laws of war as described in paragraph 347 of the Rules of Land Warfare.

It is maintained, however, that, according to the Regulations Governing the Trial of War Criminals in the Pacific, "the Military Commission . . . shall have jurisdiction over all of Japan *and other ares occupied by the armed forces* commanded by the Commander in Chief, United States Army Forces, Pacific" (underscoring supplied), and the Philippines is not an occupied territory. The American Forces have occupied the Philippines for the purpose of liberating the Filipino people from the shackles of Japanese tyranny, and the creation of a Military Commission for the trial and punishment of Japanese war criminals is an incident of such war of liberation.

It is maintained that Spain, the "protecting power" of Japan, has not been given notice before trial was begun against petitioner, contrary to the provisions of the Geneva Convention of July 27, 1929. But there is nothing in that Convention showing that notice is a prerequisite to the jurisdiction of Military Commissions appointed by the victorious belligerent. Upon the other hand, the unconditional surrender of Japan and her acceptance of the terms of the Potsdam Ultimatum are a clear waiver of such a notice. It may be stated, furthermore, that Spain has severed her diplomatic relations with

Japan because of atrocities committed by the Japanese troops against Spaniards in the Philippines. Apparently, therefore, Spain has ceased to be the protecting power of Japan.

And, lastly, it is alleged that the rules of procedure and evidence being followed by the Military Commission are a denial of a fair trial. The supposed irregularities committed by the Military Commission in the admission of allegedly immaterial or hearsay evidence, cannot divest the commission of its jurisdiction and cannot be reviewed in a petition for habeas corpus. (25 Am. Jur., 218; Collins vs. McDonald, 258 U. S., 416; 66 Law. ed., 692; 42 Sup. Ct., 326.)

For all the foregoing, petition is hereby dismissed, without costs.

Jaranilla, Feria, De Joya, Pablo, Hilado, Bengzon, and Briones, JJ., concur.

Paras, J., concur in the result.