

Regulations governing trial of  
accused war criminals

(14)

(20)

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TRIALS

(SOP)

Regulations

R E S T R I C T E D

GENERAL HEADQUARTERS  
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500  
5 December 1945

AG 000.5 (5 Dec 45)LS

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 442.  
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.

R E S T R I C T E D

R E S T R I C T E D

BASIC: Ltr. SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945,  
subj: "Regulations Governing the Trials of Accused War Criminals",  
to CinC, USAFPAC, CG 6th Army, CG 8th Army and CG XXIV Corps.,

- (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. *This fact will be announced by the president of the commission in open court.*

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.

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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.

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- (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

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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 respon-  
sibility through membership in that unit, group or or-  
ganization. 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 member-  
ship or participation therein.

(4) (6) The official position of the accused shall not absolve  
him from responsibility, nor be considered in mitiga-  
tion 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 deter-  
mines that justice so requires.

(5) (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 de-  
termine only the truth or falsity of such confessions  
or statements.

e. Trial Procedure. The proceedings at each trial will be con-  
ducted 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  
purposes to submit to the commission, and the commission  
thereupon may rule upon the admissibility of such evi-  
dence.
- (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 mo-  
tion of the defense for a finding of not guilty, con-  
sider and rule whether the evidence before the com-  
mission supports the charges against the accused.

R E S T R I C T E D

*Handwritten notes:*  
Such confession or statement was procured by means which the Commission believes to have been of such a character that they may have caused the accused to make a false statement. The Commission may strike out or disregard any such confession or statement.

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BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945, subj: "Regulations Governing the Trials of Accused War Criminals", to CinC, USAFFAC, CG 6th Army, CG 8th Army and CG XXIV Corps.

- (5) 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 prosecution 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.

R E S T R I C T E D ..

*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.*



R E S T R I C T E D

BASIC: Ltr, SCAP, file AG 000.5 (5 Dec 45)LS, dated 5 December 1945,  
subj: "Regulations Governing the Trials of Accused War  
Criminals", to CinC, USAFPAC, CG 6th Army, CG 8th Army and  
CG XXIV Corps.

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:

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

Added:

7. Oaths

a Power To Administer Oaths: Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuting or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee to administer oaths with respect to all matters in the execution of such duty.

R E S T R I C T E D

GENERAL HEADQUARTERS

SUPREME COMMANDER FOR THE ALLIED POWERS

AG 00.5 (27 Dec 46)LS-L

APO 500  
27 December 1946

SUBJECT: Amendments to Regulations Governing the Trials of Accused War Criminals.

TO : Commanding General, Eighth Army, APO 343.

1. Reference is made to Letter Order, AG 000.5 (5 Dec 45)LS, General Headquarters, Supreme Commander for the Allied Powers, subject: "Regulations Governing Trials of Accused War Criminals."

2. The following amendments are directed in Letter Order, referred to in paragraph 1 above:

- a. In paragraph 1a, delete the words, "units and organizations." ✓
- b. In paragraph 3a, delete in the last sentence thereof, the words "in open court" and add immediately after said last sentence the following: "This fact will be announced by the president of the commission in open court." ✓
- c. Delete paragraphs 5d(4) and 5d(5). ✓
- d. Delete "(6)" from 5d(6) and substitute therefor "(4)." ✓
- e. Delete paragraph 5d(7) and substitute therefor:  
"(5) All purported confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believes to have been of such character that they may have caused the accused to make a false statement, the commission may strike out or disregard any such portion thereof as was so procured." ✓
- f. In paragraph 5g, delete the first sentence and substitute therefor: ✓
- "g. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, forfeiture of real or personal property, fine, or such other punishment as the commission shall determine to be proper." ✓

g. Add paragraph 7 as follows:

"(7) OATHS.

a. Power to Administer Oaths.

Any person, military, naval, civilian, who, by competent authority is assigned the duty of administering, investigating, prosecuting, or defending suspected war criminals subject to trial under these regulations, and while acting under the assignment, may be empowered by the Supreme Commander for the Allied Powers or his designee, or by the convening authority or his designee, to administer oaths with respect to all matters in the execution of such duty."

3. These amendments shall not affect any case in which the accused has been duly arraigned and, except as amended, all provisions of the subject regulations continue to remain in full force and effect.

BY COMMAND OF GENERAL MacARTHUR:

/s/ J. B. Cooley  
JOHN B. COOLEY  
Colonel, AGD,  
Adjutant General.

HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

AG 000.5 (YO)

5 February 1946

SUBJECT: Rules of Procedure and Outline of Procedure for Trials of  
Accused War Criminals.

TO : Presidents of War Crimes Commissions.

SECTION I: RULES OF PROCEDURE

The following rules of procedure, in addition to and supplemental to regulations governing the trials of accused war criminals, as outlined in Letter, General Headquarters, Supreme Commander for the Allied Powers, AG 000.5 (5 Dec 45)LS, Subject: "Regulations Governing the Trials of Accused War Criminals," dated 5 December 1945, will govern the trial of persons, units and organizations accused as War Criminals.

1. Affidavits, Statements, Documents, and Preliminary Motions.

a. Copies of all statements, affidavits, and other documents which the prosecution proposes to introduce into evidence will be furnished to the defense at the time a case is referred for trial. At least 24 hours prior to arraignment, the defense will furnish to the prosecution copies of all statements, affidavits, and other documents then in its possession which the defense proposes to introduce into evidence. Subsequent to this time, any other statements, affidavits and documents proposed to be introduced into evidence by the defense will be furnished opposing counsel as soon as possible.

b. Either side will indicate to opposing counsel the portions of any , affidavit or other document it proposes to offer as evidence in the trial. Such indication will be made at the time copies thereof are furnished or made available to opposing counsel.

c. If, either before or during the trial, but after copies of the documents have been furnished to opposing counsel, as set out above, either side receives or is apprised of additional documents which will be used in the trial, it will notify opposing counsel thereof as promptly as possible, and thereafter furnish copies as soon as practicable. Opposing counsel will then promptly take such action as may be necessary with the view of avoiding any delay in the trial of the case.

d. The rules set out in a, b, and c above will not be construed to include statements of the accused or any other witness who is available to appear in person before the Commission.

e. Prior to trial, both prosecution and defense will furnish opposing counsel copies of any preliminary motions to be made to the Commission.

2. Affidavits.

In offering affidavits or other written statements of testimony the prosecution will preface the offer with a statement as to whether or not to the best of the prosecution's knowledge or information the affiant or the author of the statement is at the time of the trial present in either the Philippine Islands, the Ryukyus, Japan, or Korea.

Ltr Hq Eighth Army, AG 000.5 (YO), 5 Feb 46, subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", contd.

3. Rights of the Accused as Witness.

a. The accused may take the stand as a witness or he may remain silent. If he takes the stand he may make a sworn or unsworn statement but in either case he will be subject to cross-examination on statement made, cross-examination is nowise to be limited to matters brought out on direct examination.

b. If he remains silent, the Commission may draw such inference from his failure to testify as may seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

c. The prosecution may in argument comment to the Commission on an accused's failure to testify.

4. Identification of Accused.

The accused may be required to testify for the purpose of identification, respecting his name, age, rank, occupation, identifying marks or characteristics and his status and whereabouts during the period alleged in the charges and specifications, excepting therefrom all testimony relative to the issue of guilt or innocence.

5. Interpreters and Interpretation.

a. No criticism of an interpreter, direct or implied, will be made in open court by counsel of either side until the following steps have been taken:

- (1) The Chief Interpreter will be advised of a complaint during the next court recess.
- (2) The Chief Interpreter will investigate the matter and:
  - (a) Convince the complaining party that no substantial error exists; or
  - (b) Caution and advise the interpreter if necessary; or
  - (c) Prepare a correction of the record to be entered as a stipulation upon reconvening of the Commission; or
  - (d) Prepare an opinion to be given to the Commission if required.
- (3) If the Chief Interpreter cannot satisfy both the prosecution and the defense, the complaining party will send a message to the Commission requesting an off-record conference in the matter.

Ltr Hq Eighth Army, AG 000.5 (YO), 5 Feb 46, subject : "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals.", contd.

b. Counsel are reminded that:

- (1) Interpreting between oriental and occidental language is not comparable to coding and decoding cypher messages, but requires a distressing amount of circumlocution and rearrangement of thought.
- (2) Counsel is advised, when working through an interpreter:
  - (a) To use short, simple questions as free from artifice as if examining a small child.
  - (b) Whenever it is necessary to refer to previous testimony, to lay a foundation to insure that both the interpreter and the witness understand the reference to previous testimony.
- (3) The following types of questions are particularly to be avoided as leading to misunderstanding and futile discussions:
  - (a) Long questions. (Impossible for the interpreter and witness to remember)
  - (b) Complicated questions. (Dependent clauses confuse both interpreter and witness.)
  - (c) Conditional questions. (Usually beyond comprehension of an oriental witness.)
  - (d) Sarcastic questions. (Usually depend on untranslatable emphasis or play on words; waste effort)
  - (e) Negative questions. ("You did not see them, did you?" Answer will be, "Yes, I did not see them" or "No, I saw them")
  - (f) Questions hinging on the precise meaning of a single word. (The interpreter picks from several choices that English word which he believes will most closely express his understanding of the witness. To question the witness about the English word is futile)
- (4) The senior member of the staff of both prosecution and defense are charged with instructing their assistants in these rules and thereafter to apply prompt corrective action to stop at once any violation of the principles announced herein.

7. Authentication of Record of Trials.

a) The record of trial will be prepared under the supervision of the prosecution for the signature of the President of the Commission and the senior member of the prosecution staff.

b. The record will be submitted to the Defense Counsel for check by him before the record is authenticated by the prosecution and the President of the Commission. The Defense Counsel will note on the

ltr Hq Eighth Army, AG 000.5 (YO), 5 Feb 46, subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", contd.

record the fact that the record has been submitted to him and checked by him prior to authentication.

c. In the event that the record cannot be authenticated by the President of the Commission and the senior member of the prosecution staff by reason of the death, disability, or absence of either or both of them, it shall be signed by a member of the Commission in lieu of the president and by another member of the prosecution staff, if there be one, in lieu of the senior member of the prosecution staff, otherwise by another member of the commission.

## SECTION II OUTLINE OF PROCEDURE

The following outline of procedure will govern the conduct of trials before military commission of persons, units and organizations accused as war criminals:

There will be present: Commission  
Accused  
Prosecution Staff  
Defense Staff  
Interpreters  
Commission Reporters  
Press Representatives  
Photographers  
Spectators

All persons in the courtroom will be seated prior to the time set for arraignment. The "Balliff" for the Commission will announce the entrance of the members of the Commission by calling "Attention". All present in the courtroom will stand and remain standing until the Members of the Commission are seated.

SEATING OF THE COMMISSION: The presiding Member (senior officer) will be seated in the center, with the Law Member on his left. Remaining Members will be seated alternately to the right and left of the Presiding Member in order of seniority.

When the Commission is ready, the trial proceeds substantially as follows:

PRESIDING OFFICER: "The Commission is in session and is ready to hear any matter to be brought before it."

PROSECUTOR: "The prosecution is ready to proceed with the trial of the United States of America against" (name of the accused as read from the caption).

PROSECUTOR: "The accused is present, together with defense counsel appointed by the convening authority. The prosecution is ready to proceed."

PRESIDING OFFICER: "You may proceed."

PROSECUTOR: "The Reporters will be sworn."

(The Reporters rise. The Prosecutor facing the Reporters repeats the following oath:)

"You (names of Reporters) swear that you will faithfully perform the duties of reporters to this Commission. So Help you God."

REPORTERS: "I do."

Ltr Hq Eighth Army, AG 000.5 (YO), 5 Feb 46, subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", contd.

(The Reporters sit down and thereafter are not required to rise until oath is administered to the Commission and Prosecutors, after which they resume their seats and remain seated throughout the trial.)

PROSECUTOR: "The Interpreters will be sworn."

(The Interpreters rise, and the Prosecutor facing them repeats the following oath:)

"You (names the Interpreters) swear that you will truly interpret in the case now in hearing. So Help you God."

INTERPRETERS: "I do".

(Interpreters are then seated.)

PROSECUTOR: "The following members of the Commission appointed by Paragraph \_\_\_\_\_, Special Orders No. \_\_\_\_\_, Headquarters \_\_\_\_\_, dated \_\_\_\_\_ (as amended by Paragraph \_\_\_\_\_, Special Orders No. \_\_\_\_\_, dated \_\_\_\_\_ are present."

(The Prosecutor announces by name and rank the Members are present.)

"There are no Members absent."

(Or: "Absent, Colonel Jones, sick in hospital.")

PROSECUTOR: "The Prosecution submits, for incorporation into the record of these proceedings, the following documents:

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



Ltr Hq Eighth Army, AG 000.5 (YO), 5 Feb 46, subject: "Rules of Procedure and Outline of Procedure for Trials of Accused War Criminals", contd.

"Letter Order AG 000.5 (10 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, dated \_\_\_\_\_, with the subject being "Trials of \_\_\_\_\_"

"Letter Order AG 000.5 (10 Dec 45), General Headquarters, United States Army Forces, Pacific, dated \_\_\_\_\_, with the Subject 'Trials of \_\_\_\_\_'."

"Paragraph \_\_\_\_\_ of Special Orders \_\_\_\_\_, Headquarters Eighth Army, dated \_\_\_\_\_, (entitled 'Appointment of a Military Commission')."

(Any changes in Special Orders will be noted by the Prosecutor. Defense Counsel will have been given an opportunity to examine these documents prior to their being offered.)

PRESIDING OFFICER: "There being no objections, the Orders will be received and incorporated into the record of these proceedings. Does the Prosecution desire to challenge any Member of the Commission for cause?"

PROSECUTOR: "The prosecution has no Challenges" (or as the case may be).

PRESIDING OFFICER: "Does the Defense desire to challenge any Member of the Commission for cause?"

DEFENSE: "The Defense has no challenge for cause (or 'The Defense challenges Colonel \_\_\_\_\_ for cause.' The Defense then states reason for challenge)."

PROSECUTOR: "The Prosecution is ready to proceed with the arraignment of \_\_\_\_\_ (name of accused)."

PRESIDING OFFICER: "The Commission will be sworn."

(All persons in the room will rise and stand until the swearing of the Commission and of the Prosecution is completed. Each Member of the Commission raises his hand as his name is called by the Prosecutor who administers the following oath:)

PROSECUTOR: "You Colonel \_\_\_\_\_, Colonel \_\_\_\_\_, etc., do swear that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice without partiality, favor or affection, according to your conscience, the best of your understanding, and the Custom of War in like cases; and you do further swear that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court except to the Prosecutor and Assistant Prosecutor; neither will you disclose or discover the vote or opinion of any particular Member of the Commission upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So Help you God."

EACH MEMBER OF THE COMMISSION: "I do".

(Members of the Commission lower their hands but remain standing while the Presiding Officer administers the following oath to the Members of the Prosecution Staff.)

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PRESIDING OFFICER: "The Prosecution will be sworn. You Major \_\_\_\_\_, Captain \_\_\_\_\_, do swear that you will faithfully and impartially perform the duties of Prosecutor in the case now brought before this Commission. So Help you God."

EACH MEMBER OF THE PROSECUTION: "I do."

(All now resume their seats except the Prosecutor.)

DEFENSE: "The Charges and Specifications were received by the Defense Counsel and the accused has been duly apprised of each offense charged. The accused has also been advised of his rights as provided in paragraph 5 b of Letter AG 006.5 (5 Dec 45) LS, General Headquarters, Supreme Commander for the Allied Powers, entitled 'Regulations Governing the Trials of Accused War Criminals', heretofore introduced into the record of these proceedings."

PRESIDING OFFICER: "Whom does the accused desire to introduce as Defense Counsel?"

(If the accused desires the regularly appointed Defense Counsel the proceedings will continue. If the accused desires counsel of his own selection to the exclusion of regularly appointed Defense Counsel, and the desired Counsel is present, then the regularly appointed Defense Counsel will be excused and the proceedings will continue. If the accused desires counsel of his own selection and requests that the proceedings be continued until such counsel is made available to him, the Commission will consider the availability of desired Counsel and if the request of the accused is granted will continue the case until such time as Counsel can be secured. If the request of the accused is denied, he will be given an opportunity to make another selection but the arraignment will continue with the regularly appointed Defense Counsel. If accused elects to conduct his own defense and fails to designate Special Counsel, the regularly appointed Defense Counsel will be present with the accused and available in the event he desires its advice.)

PRESIDING OFFICER: "The Charges and Specifications will be read to the accused."

(Prosecutor will read the complete Charges and Specifications, together with affidavit of accuser and reference for trial.)

PROSECUTOR: "With permission of the Commission, the Prosecution introduces the Charges and Specifications which have been read to the accused for incorporation into the record of these proceedings."

(Prior to offer, Defense Counsel will be given an opportunity to examine Charge and Specifications.)

PRESIDING OFFICER: "There being no objection, the Charge and Specifications are received and will be incorporated into the Record. Are there any special pleas by the Defense?"

DEFENSE: "There are no special pleas (or as the case may be)."

PRESIDING OFFICER: "\_\_\_\_\_ (Naming accused) at this time the Commission will hear your plea to the Charge and Specifications which have been read to you. You may plead either 'Guilty' or 'Not Guilty'".

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(Accused and Defense Counsel will rise and accused will plead "Guilty" or "Not Guilty" to each Specification and to the Charge. If accused has not determined his plea and if he so requests, Commission will set a time for receipt of plea and continue the proceedings until that time. If accused refused to plead, the Presiding Officer will then state:)

PRESIDING OFFICER: "The accused having failed to plead to the Charge and Specifications, there will be entered in his behalf upon the record the plea of "Not Guilty".

PRESIDING OFFICER: "The Prosecution will make its opening statement."

(Prosecution makes opening statement.)

PROSECUTOR: "The Prosecution calls as its first witness: \_\_\_\_\_."

(Witness presents himself in front of and faces the Presiding Officer, and if a member of the Military Services salutes the Presiding Officer. After which, the Prosecutor, standing, administers the following oath to the witness: NOTE: Witness will be sworn according to his particular belief)\*

"You swear (or affirm) that the evidence you shall give in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So Help you God."

\*NOTE: Japanese Witnesses will be sworn by the following oath:

"In accordance with my conscience I swear that I will tell the truth, I will hide nothing and I will conceal nothing."

PROSECUTOR: "Do you understand that if you fail to tell the truth as you have just sworn to do, you are liable to punishment by the Commission, or any other American Court or Commission?"

(Prosecution proceeds with direct examination. This is followed by Cross-Examination by the Defense, and Examination by the Commission in the case of each witness called by the Prosecutor.)

(Documentary Evidence will be introduced as follows:)

PROSECUTOR: "The Prosecution offers in evidence (the original) (a certified copy) (a photostatic copy) of an affidavit (or other document) to be attached to the record and marked Exhibit \_\_\_\_\_ (to be withdrawn at the conclusion of the trial and an authenticated copy substituted therefor).

(After the Prosecution presents its evidence, the Prosecutor announces:)

"The Prosecution rests."

PRESIDING OFFICER: "The Defense will make its opening statement."

(The Defense makes its opening statement).

DEFENSE COUNSEL: "The Defense calls as its first witness \_\_\_\_\_."

(Defense presents its case in the same manner as outlined above for the prosecution. The Prosecutor administers the oath to the witnesses. Defense then proceeds with direct examination, followed by cross-examination by the Prosecution, re-direct

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examination by the Defense, and examination by the court, if desired. When the Defense has completed its case, the Defense Counsel announces:)

DEFENSE COUNSEL: "The Defense rests."

The Prosecution now presents any rebuttal witnesses, followed by presentation of any rebuttal witnesses for the Defense.)

PRESIDING OFFICER: "The Commission will now hear the arguments for the Prosecution and Defense." (Arguments will be conducted as directed by the Commission)

PRESIDING OFFICER: "The Commission will be closed."

(When the Commission arrives at its judgement and sentence, the Commission will be opened. In the presence of the Accused, his Counsel, and the personnel of the Prosecution (All of whom remain standing), the Presiding Officer announces the judgement and sentence.)

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER:

/s/ Ward W. Conquest  
WARD W. CONQUEST  
Colonel, AGD  
Adjutant General

R E S T R I C T E D

HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Commanding General  
APO 343

16 January 1947

AG 000.5 (YR)

SUBJECT: Rules of the Procedure and Outline of Procedure for  
Trials of Accused Criminals.

TO : Presidents of War Crimes Commissions.

Letter, this headquarters, subject, same as above, file  
number AG 000.5 (YO), dated 5 February 1946, is amended as follows;

Paragraph 2 of Section I is hereby rescinded.

BY COMMAND OF LIEUTENANT GENERAL EICHELBERGER

/s/ Otis N. Luckman  
/t/ OTIS N. LUCKMAN  
Capt. A.G.D.  
Asst. Adjutant General

R E S T R I C T E D