

MALACAÑAN PALACE
MANILA

EXECUTIVE ORDER NO. 68

ESTABLISHING A NATIONAL WAR CRIMES OFFICE AND PRESCRIBING RULES AND
REGULATIONS GOVERNING THE TRIAL OF ACCUSED WAR CRIMINALS

I, MANUEL ROXAS, President of the Philippines, by virtue of the powers vested in me by the Constitution and laws of the Philippines, do hereby establish a National War Crimes Office charged with the responsibility of accomplishing the speedy trial of all Japanese accused of war crimes committed in the Philippines, and prescribe the rules and regulations governing such trial.

The National War Crimes Office is established within the Office of the Judge Advocate General of the Army of the Philippines and shall function under the direction, supervision and control of the Judge Advocate General. It shall proceed to collect from all available sources evidence of war crimes committed in the Philippines from the commencement of hostilities by Japan in December, 1941, maintain a record thereof, and bring about the prompt trial of the accused.

The National War Crimes Office shall maintain direct liaison with the Legal Section, General Headquarters, Supreme Commander for the Allied Powers, and shall exchange with the said office information and evidence of war crimes.

The following rules and regulations shall govern the trial of

persons accused as war criminals:

I. ESTABLISHMENT OF MILITARY COMMISSIONS:

a. General. Persons accused as war criminals shall be tried by military commissions to be convened by, or under the authority of, the President of the Philippines.

II. 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. The military commissions established hereunder shall have jurisdiction over all offenses including, but not limited to, the following:

(1) 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.

(2) 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.

(3) Murder, extermination, enslavement, deportation and other inhuman acts committed against civilian populations 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 local laws.

III. MEMBERSHIP OF COMMISSIONS:

a. Appointment. The members of each military commission shall be appointed by the President of the Philippines, 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 the said new member or alternate. This fact shall 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 in which he personally investigated, or wherein his presence as a witness

is required. 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 vote 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.

IV. PROSECUTORS:

a. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission.

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.

V. POWERS AND PROCEDURE OF COMMISSIONS:

a. Conduct of the Trial. A commission shall:

(1) Confine each trial strictly to a fair and 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 the 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. X

(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; 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 shall 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 a member of any medical service personnel, or by any 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) The official position of the accused shall not absolve him from responsibility, nor be considered in mitigation of punishment. Further, action pursuant to an 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.

(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.

e. Trial Procedure. The proceedings of each trial shall be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification shall 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 it proposes 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 as being 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 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.

h. Approval of Sentence. No sentence of a military commission shall be carried into effect until approved by the Chief of Staff: Provided, That no sentence of death or life imprisonment shall be carried into execution until confirmed by the President of the Philippines. For the purpose of his review, the Chief of Staff shall create a Board of Review to be composed of not more than three officers none of whom shall be on duty with or assigned to the Judge Advocate General's Office. The Chief of Staff shall have the authority to approve, mitigate, remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to the accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. Except as herein otherwise provided, the judgment and sentence of a commission shall be final and not subject to review by any other tribunal.

VI. RULE-MAKING POWER:

Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions of this Order, or such rules and forms as may be prescribed by the convening authority or by the President of the Philippines.

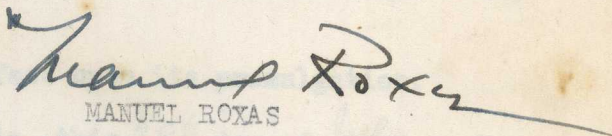
VII. The amount of SEVEN HUNDRED THOUSAND PESOS (P700,000.00) is hereby set aside out of the appropriations for the Army of the Philippines for use by the National War Crimes Office in the accomplishment of its mission as hereinabove set forth, and shall be expended in accordance with the recommendations of the Judge Advocate General as approved by the President. The buildings, fixtures, installations, messing, and billeting equipment and other property heretofore used by the Legal

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Section, Manila Branch, of the General Headquarters, Supreme Commander for the Allied Powers, which will be turned over by the United States Army to the Philippine Government through the Foreign Liquidation Commission and the Surplus Property Commission are hereby specifically reserved for use of the National War Crimes Office.

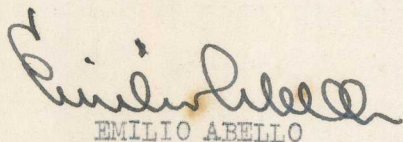
Executive Order No. 64 dated August 16, 1945, is hereby repealed.

Done in the City of Manila, Philippines, this 29th day of July, in the year of Our Lord, nineteen hundred and forty-seven, and of the Republic of the Philippines, the second.


MANUEL ROXAS

President of the Philippines

By the President:


EMILIO ABELLO

Chief of the Executive Office