



'JUS GLADII' - THE RIGHT OF THE SWORD:

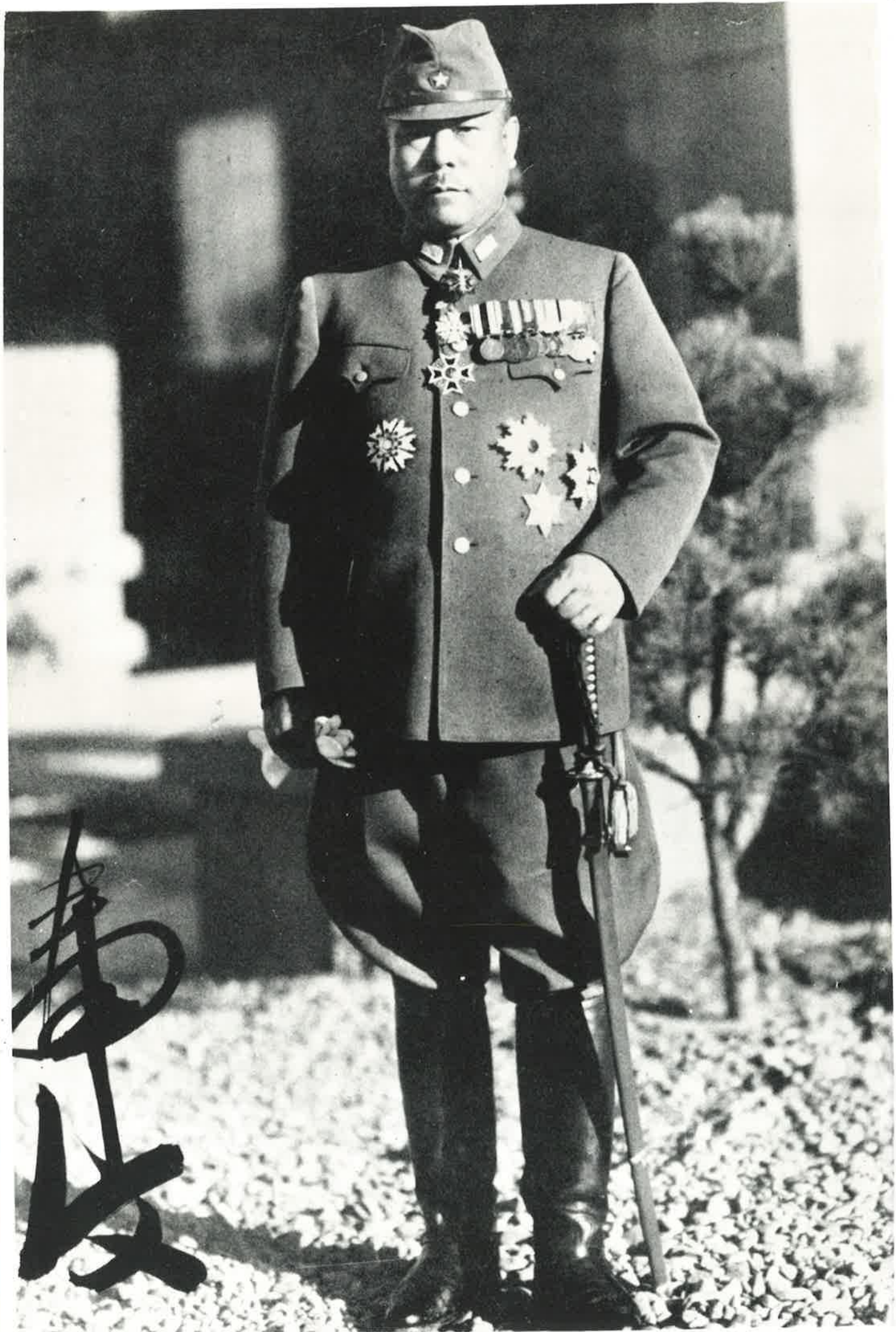
THE TRIAL OF GENERAL YAMASHITA TOMOYUKI.

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A TIGER LEAVES HIS SKIN WHEN HE DIES,
A MAN LEAVES HIS NAME.

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STATEMENT

This thesis contains no material which has been accepted for the award of any degree or diploma in any University and, to the best of my knowledge and belief contains no material previously published or written by any person except when due reference is made in the text of the thesis.

words, was Yamashita's guilt or innocence being decided upon the substantive issue, or were external, political considerations paramount?

Starting from the assumption that the general purpose of trials is to achieve justice and equity between parties, then a correlation between these goals and the behaviour of the United States authorities in Yamashita's trial is needed. The disrespect and disregard of the law, and the extreme haste that characterised the American approach to the Yamashita trial are suggestive of the supremacy of political motivations.

An analysis of American foreign policy goals in Asia - the maintenance of stability in the region and its concomitant, the need for free trade and equal access to natural resources - particularly as they involve Japan and the Philippines, lead to the conclusion that American foreign policy attitudes determined the approach of the military commission at Yamashita's trial. A conviction was required by the dictates of politics, therefore the verdict was predictable.

In a second section of the thesis, a study is made of a selection of later command responsibility trials which amplify issues of the Yamashita trial, which develop the principle further, or show how it was applied by other prosecuting agencies, and the difficulties they encountered in its use. Trials selected for discussion include the I.M.T.F.E. and trials held at Nuremberg, the trial of Admiral Toyoda and the trials of senior officers held by Australia. This has enabled a comparative aspect and an Australian dimension to be included.

Major sources for the study have been the trial transcripts of the Yamashita, Toyoda and I.M.T.F.E. trials, as well as transcripts and other official documents on the Australian trials. The minutes of the Far Eastern Commission were consulted, as were the Nippon Times and other newspapers. Underpinning these primary sources are a wide range of secondary sources, focussing largely on the legal and foreign policy aspects of the thesis.

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But, I alone am responsible for all crimes of omission or those of commission which may occur herein.