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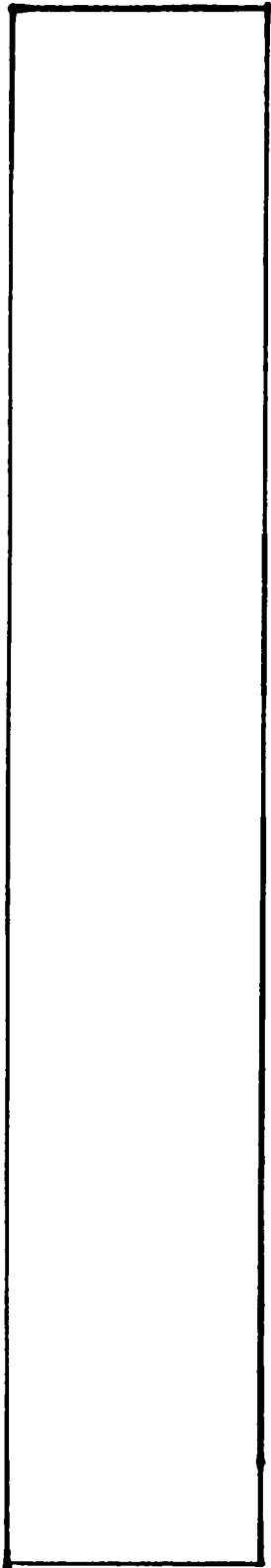
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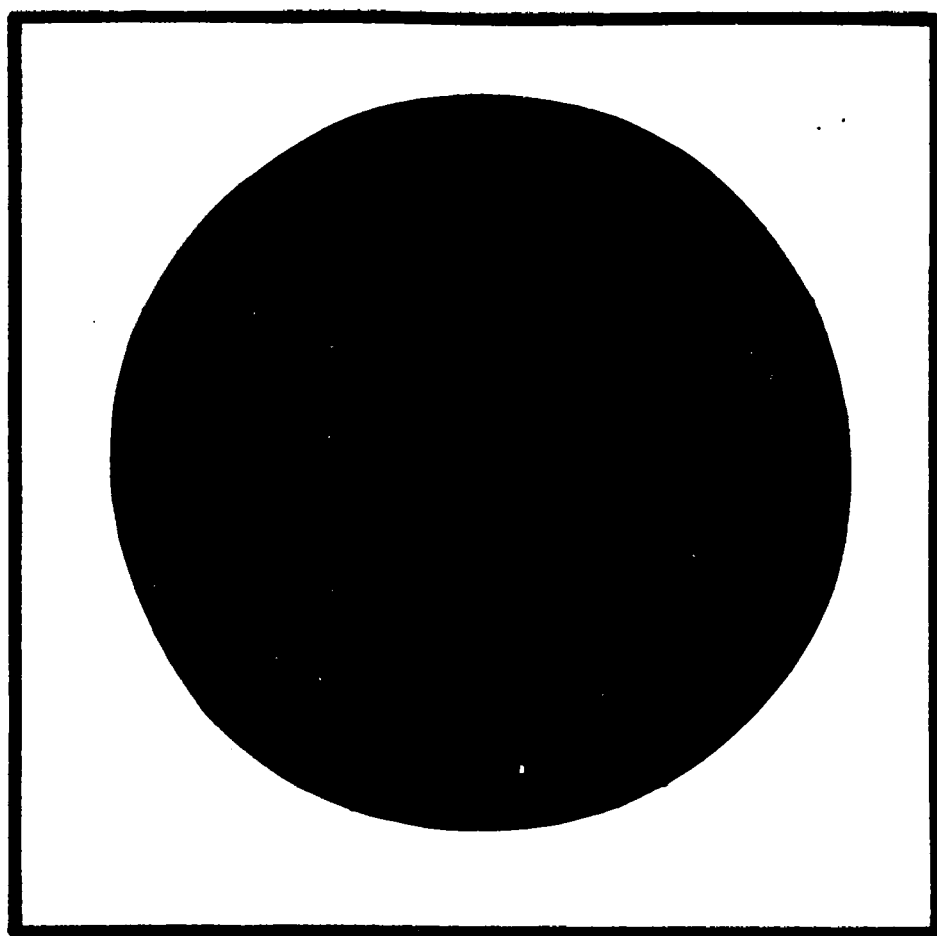


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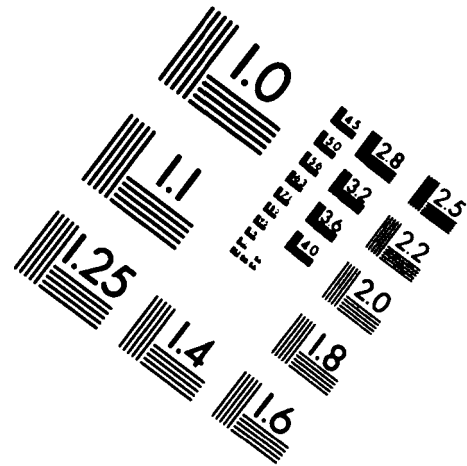
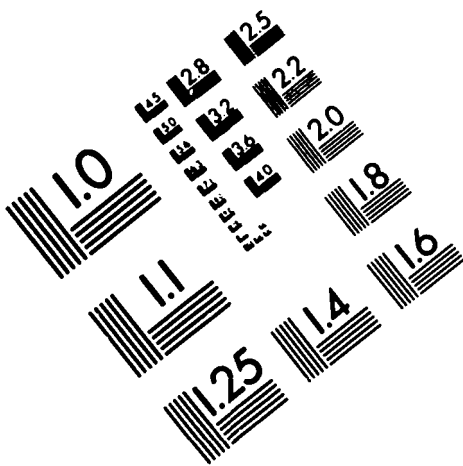
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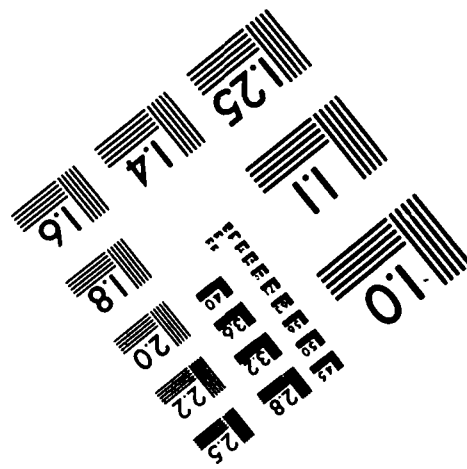
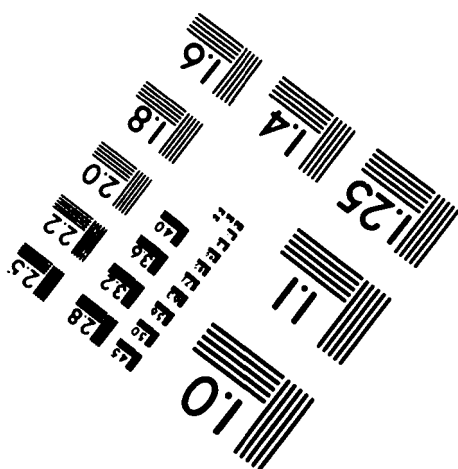
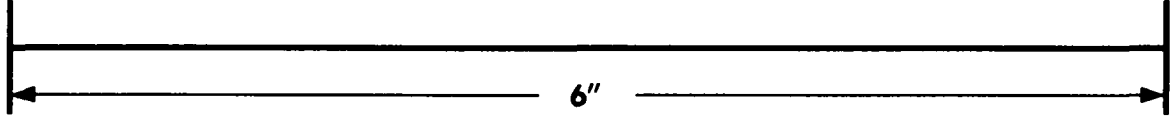
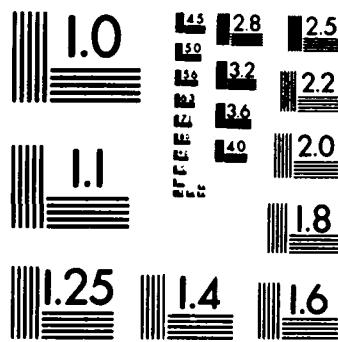
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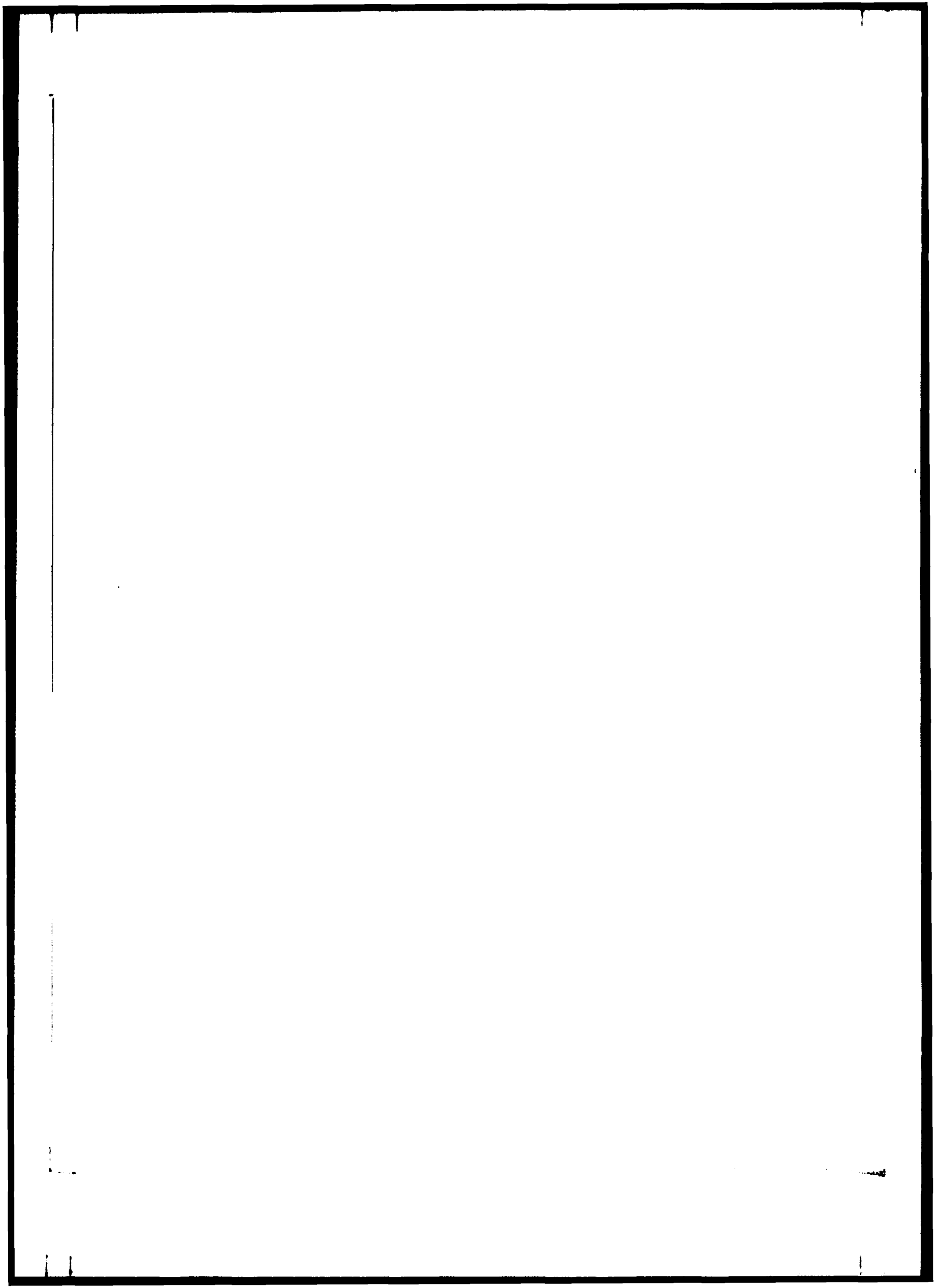
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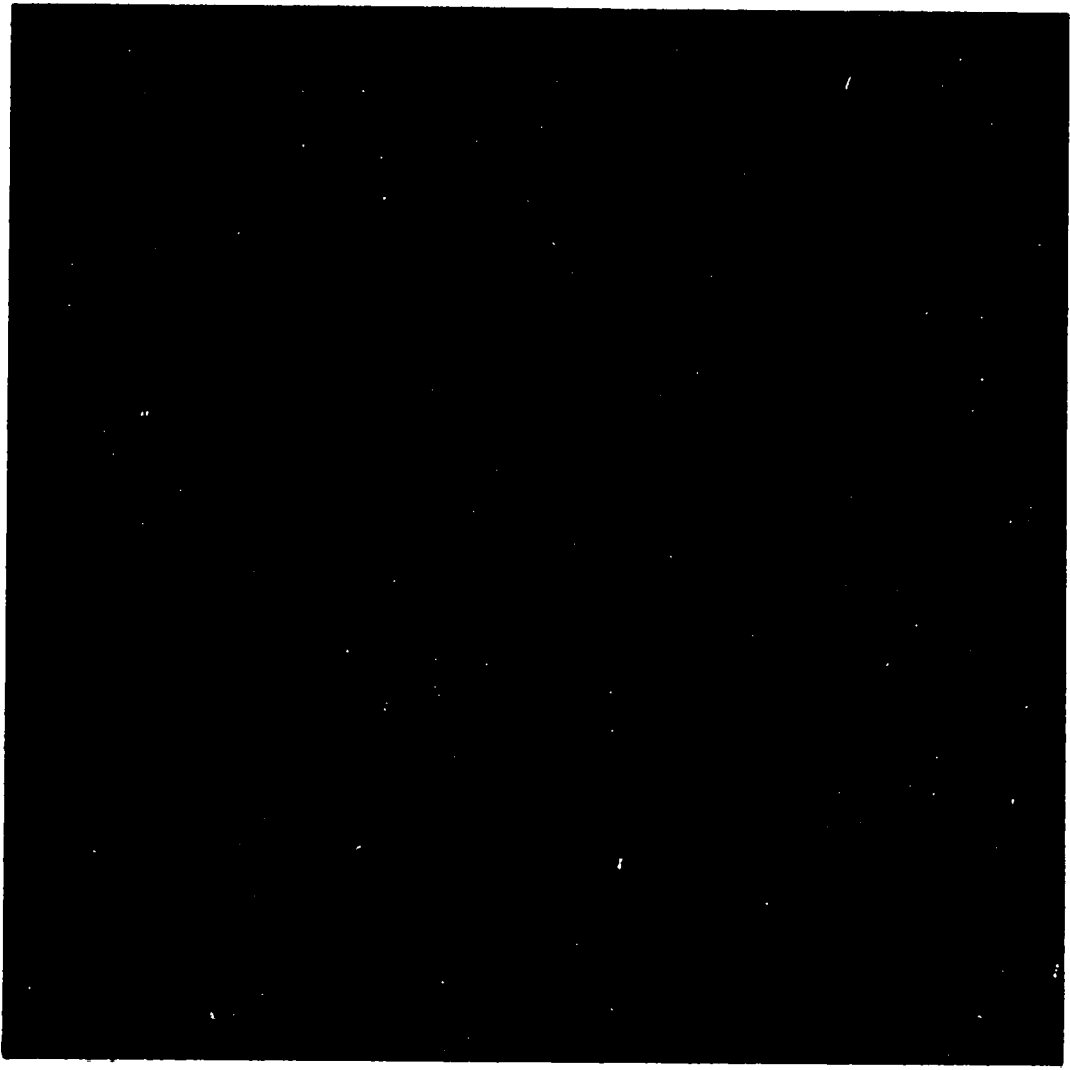


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1 MARCH 1948

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Monday, 1 March 1948

1
2
3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE LORD PATRICK,
14 Member from the United Kingdom of Great Britain, not
15 sitting from 0930 to 1600; HONORABLE JUSTICE HENRI
16 BERNARD, Member from the Republic of France and
17 HONORABLE JUSTICE I. M. ZARYANOV, Member from the USSR.,
18 not sitting from 1330 to 1600.

19 For the Prosecution Section, same as before.

20 For the Defense Section, same as before.

21
22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
25

MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now in session.

2 THE PRESIDENT: Mr. Sandusky.

3 MR. SANDUSKY: May it please the Tribunal,
4 I present the summary of evidence with respect to the
5 accused SHIRATORI, Toshio.

6 THE PRESIDENT: Before you do so I must
7 announce that all the accused are present except
8 UMEZU and MUTO who are represented by counsel. The
9 Sugamo prison surgeon certifies that they are ill and
10 unable to attend the trial today. The certificate
11 will be recorded and filed.

12 MR. SANDUSKY: I. THE COUNTS

13 UU-1. The accused SHIRATORI, Toshio, is
14 charged under the following Counts of the Indictment:
15 1-17; 27-32; 34; and 44, all numbers being inclusive.

16 II. SHIRATORI'S BACKGROUND.

17 UU-2. The official curriculum vitae of
18 SHIRATORI sets forth the following information on his
19 career that will be of assistance in understanding
20 and following the course of the summary of evidence.
21 He entered the diplomatic service in July 1914 and
22 served in minor diplomatic posts successively in
23 Hongkong, United States, the Foreign Ministry in
24 Tokyo, and China. From August 1926 until September
25

1928, he served in the Japanese Embassy in Berlin.

1 His connection with the Information Bureau of the
2 Foreign Ministry began in January 1929 when he was
3 appointed Chief of the Second Section of that Bureau.
4 After serving as Acting Chief of the Bureau from
5 November 1929 to May 1930, he was given full appoint-
6 ment as Chief of the Information Bureau in October,
7 1930, and continued in that position until June 1933,
8 when he was ordered to serve as Minister in Sweden
9 and concurrently to handle affairs relating to Norway,
10 Denmark, and Finland. He was released from that
11 diplomatic mission 28 April 1937 and on the same date
12 was ordered to render temporary duty for the Foreign
13 Ministry in Tokyo and was given a full salary on the
14 Waiting List of Ambassadors. He continued in that
15 status until 22 September 1938 when he was appointed
16 Ambassador to Italy. Though he was not officially
17 released as Ambassador to Italy until 9 January 1940,
18 his actual service in Italy extended from 29 December
19 1938 to 15 September 1939. After release from his
20 Italian assignment in January 1940, he was placed on
21 the Waiting List at one-third salary. He continued
22 in this status until he was released at his own re-
23 quest from his official post 28 August 1940 to enable
24 him to accept the position as Advisor to the Foreign
25

1 Minister. He resigned as advisor on 22 July 1941.
2 From May 1942 until June 1943, he was a member of the
3 Board of Directors of the Imperial Rule Assistance
4 Political Society. He held membership in the Diet
5 from April 1942 until his resignation in December 1945.

6 UU-3. At first glance, the positions held
7 by SHIRATORI do not seem to have placed him in a
8 position where he could be a moving force in con-
9 ceiving or effectuating the ends of the conspiracy.
10 He was never in the military service nor was he a
11 State Minister sharing prime responsibilities for
12 cabinet decisions. Nevertheless, it will be shown
13 in the course of this summary of evidence how he pro-
14 jected himself from these secondary bases in the
15 governmental hierarchy into the higher levels of
16 policy decisions and how he utilized the fund of in-
17 formation and grasp of affairs he acquired in these
18 positions to become, of his own personal choice, one
19 of the most effective and most poisonous propagandists
20 for aggressive expansion. One may well take the
21 position that his crimes are the more serious because
22 they did not seek him out, as it were, by virtue of
23 his position, but rather he so extended and distorted
24 what might have been innocuous functions as to bring
25

(UU-2. c. Ex. 125, T. 783
Ex. 3575, T. 34830)

1 him into full, conspiratorial partnership with his
2 fellow defendants before the Tribunal.

3 III. AS CHIEF OF INFORMATION BUREAU, FOREIGN
4 MINISTRY.

5 UU-4. SHIRATORI's activities in the foreign
6 service prior to his assignment as Chief of the Infor-
7 mation Bureau were routine and have no direct bearing
8 on the charges brought against him. The background
9 and experience he gained from four and a half years
10 in America and from his two-year assignment in pre-
11 Hitlerite Germany do point to this fact, however,
12 which is not without significance: SHIRATORI was not
13 the narrow-minded product of a wholly feudal environ-
14 ment that his later hysterically inflammatory speeches
15 make him appear to be.

16 UU-5. SHIRATORI has minimized the importance
17 of the Chief of the Information Bureau, known to the
18 world as the "Foreign Office Spokesman," by character-
19 izing the position as one in which his "main business
20 was nothing more than handing out news items" to for-
21 eign correspondents from day to day.^{a.} Though he
22 dismissed the issuance of statements and declarations
23 of policy by the government on foreign affairs as c
24 mere routine belonging to his office,^{b.} it was brought
25

(UU-5. a. Ex. 3595, T. 35031
b. Ex. 3595, T. 35031)

1 out in cross-examination that he was involved in much
2 more than the mere physical transmission of such
3 statements. He admitted that when he presented to the
4 press prepared announcements of policy he would rely
5 upon other information in his possession to interpret
6 the policy and explain its significance.^{c.} He con-
7 firmed that his range of knowledge as Chief of Infor-
8 mation was far wider than that of any other bureau
9 Chief because his position required him to read all
10 communications and documents relating to all bureaus
11 as well as to maintain daily contact with the Foreign
12 Minister.^{d.} While admitting that he was in a position
13 to color or to twist facts in his presentations to
14 the press, he indignantly denied that he did so,
15 saying that "as a civil servant I did have a conscience
16 in regard to such matters."^{e.} However, his conscience
17 lost its luster when he was obliged later to recognize
18 an earlier admission that in handling matters relating
19 to actions of the military clique he tried "to cast
20 as plausible and as bright a surface as possible on
21 the things they had done"^{f.} so as to cover up for the
22 military and make both the "inside public and the
23 outside world" pleased with their actions.^{g.}

24 (UU-5. c. T. 35056
25 d. T. 35068
c. Ex. 3595, T. 35065
f. T. 35066
g. T. 35067)

UU-6. It was during this stage of his career
1 that SHIRATORI formed the strong ties that were later
2 to make him the Foreign Office favorite of the Army
3 group and still later the militant advocate of the
4 aggressive aims of the militarists. After he had
5 first maintained that "there was no especial necessity
6 for me to associate with army officers directly" and
7 that liaison with the army was carried on by other
8 bureaus in the Foreign Ministry, SHIRATORI was con-
9 fronted with an earlier admission that in fact he was
10 one of Foreign Office officials selected by Foreign
11 Minister S IDEHARA for the special purpose of maintain-
12 ing liaison with the Army during the Manchurian
13 Incident. ^{b.} Though SHIDEHARA evidently established
14 such liaison as a means of keeping abreast of army
15 machinations ^{c.} the Army used the device to get counsel
16 and guidance as to how to justify their aggressive
17 acts before the League of Nations in Geneva, and how
18 to prepare for and answer American protests to continued
19 treaty violations. ^{d.} That SHIRATORI lent himself
20 willingly to this and that he performed valuable and
21 substantial service for the Army in this relationship
22

23
24 (UU-6. a. T. 35071
b. T. 35076
c. T. 35072
25 d. T. 35073)

1 is clear from his admission that he was in favor with
2 the Army.^{c.} One has difficulty in reconciling this
3 popularity with the plotters of the Mukden Incident
4 and the conquest of Manchuria with his protestation
5 of being "a faithful votary" of the so-called
6 SHIDEHARA diplomacy of conciliation.^{f.} Such popularity,
7 as well as that later support he drew from military
8 circles, also seems to contradict his claim that he
9 was so high-minded and impartial that he even gave
10 out telegrams to the press when it was disadvantageous
11 to have them published abroad.^{g.} While lamenting that
12 the Foreign Office could do little to influence the
13 course of events one way or another,^h SHIRATORI pointed
14 to no effort on his own part, other than an appeal
15 at the direction of the Foreign Minister to the press
16 for cooperation in the peaceful adjustment of the situ-
17 ation, to keep the press free from an inflammatory tone
18 or to keep the public informed of the facts as the
19 Foreign Office knew them to exist in reality.^{i.}

20 UU-7. SHIRATORI's early decision to associate
21 himself with the military group dedicated to Japan's
22 armed expansion is perhaps most clearly shown in his
23 advocacy sometime before May 1932, of Japan's withdrawal
24

25 (UU-6. e. T. 35072
f. Ex. 3595, T. 35029
g. T. 35077
h. Ex. 3595, T. 35051
i. T. 35077

1 from the League of Nations. Though he specifically
2 denied that he was an advocate of withdrawal,
3 convincing evidence was later adduced which set forth
4 his argument that Japanese actions in Manchuria since
5 18 September 1931 had made it impossible for Japan to
6 remain in the League of Nations and that it was un-
7 reasonable for the small nations of Europe to attempt
8 to restrain Japan. ^{b.} Here again is the paradox of
9 this self-proclaimed votary of conciliation urging,
10 within at most eight months from the initial on-
11 slaught at Mukden, that Japan repudiate the League of
12 Nations in order to free herself from the restraints
13 that the family of nations had imposed upon itself
14 as the minimum standards of civilized international
15 conduct.

16 UU-8. Implicit in the position SHIRATORI
17 took regarding withdrawal from the League was the re-
18 cognition that Japan's aggression in Manchuria was
19 clearly subject to condemnation by the League. Equally
20 implicit in his stand was the acceptance of the con-
21 spiratorial view that Japan should continue and
22 should broaden her attack on the continent. With-
23 drawal from the League and its restraints was the next
24 logical step to be taken in furtherance of the

25 (UU-7. a. T. 35081
b. T. 35081-2)

conspiracy, and hence it was the step urged by SHIRATORI.

1 Notably, his argument on the matter did not include
2 the claim that the League misapprehended the true
3 situation, the claim of self-defense, or the other
4 familiar Japanese protestations of the time. And
5 certainly such phrases were not unknown to the spokes-
6 man who daily issued to the press indignant denials
7 of aggression and elaborate justifications of Japanese
8 military action in Manchuria. This simply illustrates
9 that every member of the conspiracy knew why Japan's
10 Army was in Manchuria and knew why Japan must with-
11 draw from the League.
12

13 UU-9. SHIRATORI's experience in casting
14 "as plausible and as bright a surface as possible on
15 the things they /the army/ had done" made it only
16 natural that he should have been one of the drafters
17 of the Japanese reply to the report of the Lytton
18 Commission. ^{b.} Later in redirect examination SHIRATORI
19 attempted to modify his admission that he "did take
20 part in drafting the Japanese reply" ^{c.} by claiming
21 that he did nothing more than translate the document. ^{d.}
22 In answer to this belated change of story, suffice it
23 to say it offends credence to be asked to believe
24

25 (UU-9. a. T. 35066
b. T. 35082
c. T. 35082
d. T. 35144)

1 that the talents of the Foreign Office Spokesman,
2 the Chief of an important bureau, were confined to
3 the clerical function of translation. The proposition
4 is the more ludicrous when one considers his eminent
5 qualifications to draft such a document: He was an
6 open advocate of withdrawal from the League; he was
7 high in Army favor; as spokesman for the Foreign
8 Office he had been justifying the Manchurian Incident
9 to the press of the world; and, by his own admission,
10 he was better informed on foreign policy matters than
11 any other bureau chief.

12 UU-10. The broad significance of Japan's
13 ultimate withdrawal from the League of Nations and
14 the impetus it gave to furthering the conspiracy have
15 been discussed in the General Summary and need not
16 be again considered here. But before leaving SHIRATORI's
17 contribution to this milestone in the conspiracy it
18 should be noted that his views were accorded the most
19 serious consideration at the highest policy-making
20 levels. SHIRATORI's opinion was either expressed
21 directly to Baron HARADA, on whose reports Prince
22 SAIONJI relied in making his important decisions, or
23 it had merited such attention in policy circles as
24 to become known to HARADA. His argument for withdrawal
25 was carried to the Prime Minister, and HARADA planned

1 to discuss it with INOUYE and SHIRATORI's present co-
2 defendants, KIDO and SUZUKI, before reporting the
3 matter to the Genro.

4 UU-11. If it be true that the position of
5 Chief of Information, per se, was of lowly stature
6 not involving policy matters, then it is abundantly
7 clear that by his maneuvering in the interest of the
8 conspiracy SHIRATORI raised himself in fact far above
9 the political mediocrity of his position. That his
10 activities were calculated to advance the conspir-
11 atorial aims may be seen from his persuading Baron
12 HARADA in September 1932 that the arch-militarist,
13 War Minister ARAKI, be made Premier. His argument for
14 such appointment was, in brief, that the exchange rate
15 had dropped because Japan did not have a strong govern-
16 ment and that, therefore, it would be a good policy
17 "to have ARAKI, who is a representative of the power-
18 ful militarists, become our Prime Minister, and to
19 proceed upon an unwavering policy for five or six
20 years more." Thus, though scarcely a function of

21 the Chief of Information, SHIRATORI sought to still
22 the dissident voices in the government that still
23 spoke out against the army policies in Manchuria. It

24 (UU-10, a. Ex 3753A, T. 37603)

25 (UU-11, a. Ex 3754, T. 37606)

will be observed that SHIRATORI could well hope that the
1 ARAKI policy would be "unwavering" because months
2 previous he had begun to prepare for the removal of
3 possible external restraints by working for Japan's
4 withdrawal from the League, as already noted.^b If
5 SHIRATORI did not succeed in promoting the candidacy
6 of ARAKI to lead the government, at least his efforts
7 were rewarded when Japan withdrew from the League of
8 Nations on 24 February 1933.

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20
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23
24 (UU-17. E. S. 35081)
25

UU-12. Even without co-conspirator ARAKI
1 at the helm SHIRATORI was sufficiently pleased with
2 the course the Japanese ship of state was taking as
3 to be reluctant in May 1933 to go abroad as a minister
4 or a councillor for the reason, it is logical to as-
5 sume, that he feared he might lose his influence in
6 the direction of the government. As recounted by
7 Baron HARADA^{a.} when SHIRATORI was approached about
8 going abroad, he objected strongly saying, "If I should
9 be sent out, there is no telling as to what may happen."
10 This we have from a man who tells the Tribunal that
11 his main function was to pass out news items to foreign
12 correspondents.^{b.} That he actually did have influence
13 which he might lose by going abroad is illustrated by
14 the fact that even as a bureau chief his support and
15 connections were strong enough to enable him to bar-
16 gain successfully with the Foreign Minister regarding
17 his proposed transfer. The account of the affair as
18 told to Baron HARADA by Vice Foreign Minister ARITA^{c.}
19 tells that SHIRATORI agreed to go abroad if ARITA also
20 would be sent abroad. To meet SHIRATORI's terms Foreign
21 Minister UCHIDA was willing to send his Vice Foreign
22 Minister away as Ambassador to England but ARITA, rather
23
24
25 (UU-12. a. Ex. 3773-A, T. 37640
b. Ex. 3595, T. 35031
c. Ex. 3773-A, T. 37640)

1 than accept, resigned his position. At this, SHIRATORI
2 felt obliged to resign also, but after consultation with
3 co-conspirator (and co-defendant) SUZUKI he decided to
4 accept a post as minister to a foreign country "pro-
5 vided there will be no change in policy."

6 IV. PERIOD PRIOR TO HIS ASSIGNMENT TO ITALY

7 A. SHIRATORI Becomes Minister to Sweden

8 UU-13. Having exacted the pledge that there
9 would be no change in the policy of aggression that had
10 carried Japan into and through two years of the Man-
11 churian Incident, SHIRATORI took up his post as Min-
12 ister to Sweden. In that capacity he also handled
13 diplomatic affairs relating to Norway, Denmark, and
14 Finland. This assignment which lasted until April 1937,
15 (although he actually returned to Tokyo in December 1936)
16 was uneventful in so far as the conspiracy is concerned.
17 The period is important, however, because it was during
18 this time that he was afforded the opportunity to ob-
19 serve at close hand the development and rise of Hit-
20 lerite Germany. Being a student of government and
21 having spent two years in Germany previously, SHIRATORI
22 could not but divine the character and sense the impli-
23 cations and world significance of the Nazi movement.
24 It is noteworthy that during his three years' stay in
25 Scandanavia, SHIRATORI visited co-defendant OSHIMA, then

1 military attaché, four or five times in Berlin, and also
 2 during this time the Anti-Comintern Pact was conceived
 3 and concluded. SHIRATORI did not recall any connection
 4 with the Pact but the honesty of that failure of recol-
 5 lection must be determined in the light of his revealing
 6 letter to ARITA in November 1935.^{c.} That exhibit was not
 7 read in full into the transcript.

8 B. SHIRATORI Calls for War with the
 9 Soviet Union

10 UU-14. At the time the letter to ARITA was
 11 written SHIRATORI was Minister to Sweden and ARITA was
 12 Minister to Belgium.^{a.} In elaborating his principal argu-
 13 ment calling for an immediate showdown with Russia he
 14 also revealed his own general political philosophy as
 15 one based on opportunism and the use of force as an
 16 instrument of national policy. He announces his con-
 17 clusions as the result of extensive reading and study
 18 of international situations during two years in Sweden.^{b.}
 19 SHIRATORI has grown distrustful of the diplomacy of the
 20 Foreign Office, which he considers to be passive and
 21 conciliatory and without definite objective.^{c.} Concilia-
 22 tion, he asserts, is merely a means of diplomacy and is
 23

24 (UU-13. a. T. 35085
 b. T. 35086
 c. Ex. 774-^h, T. 7882)
 25 (UU-14. a. Ex. 3578, T. 34845
 b. Ex. 774-^h, T. 34838
 c. Ex. 774-^h, p. 9).

merely technical. If it is to be a principle it must
1 be thorough, but to those who favor conciliation as a
2 principle he poses the question: "Have they enough
3 courage to return Manchuria to China, to get reinstated
4 in the League of Nations, and to apologize to the world
5 for the crime?" Thus, SHIRATORI disposed of concilia-
6 tion as a possibility that Japan might pursue in her
7 intercourse with other powers and thus he chose the
8 path of international outlawry. Stating that the Man-
9 churian Incident was nothing more than an effort aimed
10 to emancipate the Manchurian-Mongolian territories
11 from foreign influence, he says that "our future policy
12 towards China should be aimed solely at the exclusion
13 of outside influences . . ."^{d.} By this he does not mean
14 that all foreign activities should be excluded so that
15 Japan could obtain monopolistic positions but only
16 those influences harmful to China "and consequently to
17 Japan."^{e.} Thus, it will be observed Japan and not China
18 would be the judge of what is harmful to China. Coming
19 to his main argument, he says that "among the foreign
20 influences that should above all be expelled is that of
21 Red Russia."^{f.} Soviet Russia, he argues, is in that
22 state of development where "she will immediately sustain
23
24

25 (UU-14. d. Ex. 774-a, T. 34840

e. Ex. 774-a, T. 34841

f. Ex. 774-a, T. 34842)

1 internal collapse once she fights against some great
2 power." ^{g.} Because of this, Russia is most desirous
3 of maintaining peaceful relations with foreign powers.
4 Therefore, countries that have any pending affairs
5 that must be settled sooner or later should not idle
6 away this opportune time. SHIRATORI states his position
7 thus: "Fates have that the Slavs and the Yamoto races
8 must eventually fight each other for supremacy on the
9 Asiatic continent. * * * I believe that adoption of a
10 policy for an instantaneous removal of future calamity
11 at this stage when they are comparatively impotent is a
12 matter which never should be neglected by those who
13 bear concern for the welfare of the people and the
14 nation. I am not saying that we should unreasonably
15 force a war against Soviet Russia now. I am only say-
16 ing that we should start negotiations with her with de-
17 termination, not refusing even war if it is inevitable,
18 to shut her out completely from advancing into East
19 Asia." ^{h.}

20 UU-15. Speaking of the scope and the urgency
21 of this undertaking, he states, "Moreover, it is nec-
22 essary that the liquidation of relations with Soviet
23 Russia be thoroughgoing in order to sweep away the
24 uneasiness not only for the present but to be rid of
25

(UU-14. g. Ex. 774-A, p. 6
h. Ex. 774-A, T. 7885)

the fears and worries from the northwest forever.

1 Therefore, it is natural that way may be unavoidable.

2 It is needless to say that a diplomat should not talk
3 rashly about such matters, but I believe that if we
4 miss this opportunity today, we shall never have
5 another opportunity to oust the Slav peril forever.

6 If we execute this today, I firmly believe that we can
7 accomplish it thoroughly with minimum sacrifice and
8 with least fear of interference by third parties."^{a.}

9 Again, this we have from the self-styled v~~o~~ctary of the
10 diplomacy of conciliation. On this point it is not
11 amiss to note that in writing to ~~AKITA~~ he was a less
12 ardent apostle of conciliatory diplomacy than he was in
13 his appearance before the Tribunal. He wrote, "The
14 so-called conciliatory diplomacy was welcomed as a tem-
15 porary measure in our country after the tempest of the
16 Manchurian Incident, but upon reconsideration it was
17 merely a slogan having no particular contents."^{b.}

18
19 C. SHIRATORI Proclaims Himself an

20 Apostle of Aggression

21 UU-16. It is submitted that there could not
22 be a clearer, more definite expression of aggressive
23 intent than the proposals set forth by SHIRATORI vis-
24 a-vis the Soviet Union. In addition to the specific

25 (UU-15. a. Ex. 774-4, T. 7886, p. 10

b. Ex. 774-4, p. 9)

1 plan with respect to Russia, the document has further
2 importance in that it is the first clear-cut and un-
3 mistakable expression we have in SHIRATORI's own words
4 of his wholehearted approval of the over-all policy
5 of the conspiracy, i.e., that in seeking her destiny
6 Japan should be guided by armed opportunism and the
7 weaknesses of her neighbors rather than by peaceful
8 negotiations and adherence to treaties. His cynical
9 acceptance of war as an instrument of national policy
10 is graphically illustrated by his statement that "we
11 must anticipate that at least a half or one year will
12 elapse before hostilities with Soviet Russia will break
13 out. At the present world situation, during that per-
14 iod, she cannot make ample preparations for lack of fi-
15 nancial credit and lack of exchangeable goods. On the
16 other hand, we can make adequate preparations. This is
17 the reason why I consider that this moment of world de-
18 pression is the most opportune moment." ^{a.} Again in a
19 further statement to ARITA, SHIRATORI revealed his
20 wholly amoral political opportunism and his willingness
21 to solicit support for the militarists regardless of the
22 merits of their policies. In discussing the proposition
23 of war with Russia, he states, "It all depends upon
24 the disposition of the militarists in the near future.

25 (UU-16. a. Ex. 774-a, p. 11)

1 If the militarist's policy is decided, nothing could
2 prevent it under the present circumstances and if
3 neither diplomats nor political parties could suppress
4 them, why not support their policy and exert our best
5 to carry it out? This is my conclusion." ^{b.}

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21 (UU-16. b. Ex. 774-a, p. 2)
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D. SHIRATORI Pleads the Private Character
of His Conspiratorial Acts.

UU-17. The validity of this evidence,
challenged by the defense,^{a.} was fully substantiated
by witness YATSUGI, Kazue, who testified that he
personally made the copy of the letter that is in evi-
gence before the Tribunal.^{b.} Being unable to find any
sound ground upon which denial or repudiation of this
letter could be based, and at the same time recognizing
that with this letter SHIRATORI had wrapped himself
securely in conspiratorial robes, the defense sought
to escape responsibility by a plea of injured innocence,
to-wit, the letters were "private" -- they were not
written by the accused in his official capacity as
Minister to Sweden.^{c.}

UU-18. Either by reason of misapprehension of
the Indictment or because of the absence of any excul-
patory evidence, SHIRATORI's defense attempted in
general to meet specific items of evidence with a
variety of answers such as "the letter was private,"
"the meeting was a social occasion," "the conversation
was personal and unofficial," "the speech was not
officially approved," "the article was not written in

(UU-17. a. T. 7879.
b. Ex. 3577, T. 34835.
c. T. 34838.)

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1 an official capacity," et cetera. At the risk of
2 commenting on the obvious, it is observed that SHIRA-
3 TORI was not indicted as Minister to Sweden or as
4 Ambassador to Italy or as Foreign Office Adviser or in
5 any other official capacity. He stands indicted as an
6 individual charged with certain enumerated crimes and
7 he must answer for his actions as an individual without
8 regard to the official or unofficial character of such
9 actions. It may be noted that objection was success-
10 fully made to a question as to whether certain lectures
11 were given in a private capacity on the ground that "if
12 any act contributes to the conspiracy or is covered
13 by any of the charges in the Indictment, it is immaterial
14 whether he did so in an official capacity or in his
15 private capacity."^a

16
17 E. SHIRATORI Returns to Japan to Become the
18 Conspiracy's Spokesman for Totalitarianism.

19 UU-19. In October 1936, SHIRATORI was ordered
20 to return to Japan and actually arrived in Tokyo
21 23 December 1936, but it was not until 28 April 1937,
22 that he was officially released as Minister to Sweden.
23 On the same date he was ordered to temporary duty in
24 the Foreign Ministry where he was placed on the
25 ambassadorial waiting list at full pay. He remained in
(UU-18. a. T. 35010.)

1 that status until 22 September 1938, when he was
2 appointed Ambassador to Italy.^{a.} SHIRATORI glossed over
3 this period in his direct testimony by saying that he
4 was neither offered nor did he seek an appointment in
5 the government and that he had practically no contact
6 with the Foreign Ministry during this period.^{b.}

7 UU-20. The fact that SHIRATORI may have had
8 no official functions to perform daily at the Foreign
9 Ministry is by no means an indication that he was in
10 political hibernation or that he lacked opportunity
11 to continue working in the interests of the conspiracy.
12 Instead, his freedom from routine duties seems to have
13 given him time to perfect and to urge public acceptance
14 of his thesis that totalitarianism was to be the
15 dominant political philosophy of the future. In
16 October 1937, he published an article entitled "The
17 Fundamental Significance of Our Continental Policy" in
18 which he lauded the new spiritual movement that had
19 arisen in Japan simultaneously with the outbreak of
20 the Manchurian Incident. Saying that the followers
21 of this movement were regarded as being Fascistic, he
22 agreed that the ideology of the movement, in common with
23 the new political philosophy of Germany, was totalitarian
24 and opposed to Communism and Democracy. He argued that
25 (UU-19. a. Ex. 3595, T. 34906.
b. Ex. 3595, T. 35031.)

1 liberalism and democracy based on individualism were
2 becoming outworn and that the trend to nationalism and
3 racialism was destined to continue developing. Then,
4 in the most illuminating passage in the article, he
5 scolded the people as follows for clinging to their
6 outworn beliefs in the face of the new age of totaliter-
7 ianism: "It is certainly not a matter for congratulation
8 nor does it acc any credit to the Japanese nation that
9 no progress is marked in the thought of our people to
10 keep pace with our continental policy which alone goes
11 ahead at full blast."^{a.}

12 UU-21. The prosecution attaches great signi-
13 ficance to this particular statement for the following
14 reason: As a principle of government, totalitarianism^m
15 has twofold application -- internally to a nation's
16 domestic affairs and externally to a nation's foreign
17 relations. We have already adverted to the fact that
18 the Five Ministers' Conference decision of 7 August
19 1936 made the totalitarian policy of the conspiracy
20 the national policy of Japan in her dealings with other
21 powers. The consirators effected this external appli-
22 cation of totalitarianism without going to the people-
23 at-large for support, but the internal application of
24 such principles to the purely domestic scene posed a
25 (UU-20. a. Ex. 3596-B, T. 35104-5.)

1 different problem. Despite the early propaganda efforts
2 of HASHIMOTO, Kingoro and OKAWA, Shumei, the Japanese
3 people had not rallied to the standards of the conspi-
4 racy in sufficient strength to insure full support for
5 the newborn China Affair. To bring about such support,
6 SHIRATORI and his co-conspirators found it necessary
7 to chide the people because they had not accepted the
8 internal application of the new age totalitarianism
9 that was being applied externally in Japan's continental
10 policy. So it was, we submit, that SHIRATORI undertook
11 for the conspiracy his propaganda warfare at home within
12 a few months after his fellow conspirators had launched
13 the China Affair with the Marco Polo Bridge Incident.

14 UU-22. In March 1938, SHIRATORI again appeared
15 in the role of an apologist for totalitarianism,
16 urging the people to recognize that Japan, Germany and
17 Italy must present a united front to the world. In an
18 article entitled "Fascism vs. Popular Front," he argued
19 that the reason the democratic countries opposed the
20 totalitarian states was the fact that the latter coun-
21 tries were among the "have-nots" and, as such, were
22 compelled to adopt a trend toward expansionist policies
23 and destruction of the status quo that aroused the
24 fear and hatred of the "have" nations. He referred
25 approvingly to Japan, Germany, and Italy as being the

1 three greatest totalitarian countries of the world and
2 noted their union in the Anti-Comintern Pact. He warned
3 the "have" nations against attempting to check and
4 suppress the efforts of Japan, Germany and Italy to
5 expand their national spheres and he forecast that con-
6 tinued obstruction by the democracies "would only serve"
7 to drive Germany, Japan and Italy beyond the bounds of
8 their original Anti-Comintern Pact and compel them to
9 collaborate in self-defense along more general lines."^{a.}

10 F. SHIRATORI's Propaganda Designed to Prepare
11 Japanese People for Aggressive Alliance with the Axis.

12 UU-23. It was no mere accident of time that
13 SHIRATORI happened to import the Nazi propaganda line
14 and technique at the very time that OSHIMA and Ribben-
15 trop were exploring the possibilities of closer colla-
16 boration between Germany and Japan.^{a.} Nor was it only
17 happy coincidence that his public appeals were precisely
18 patterned to fit the needs of the conspiracy. The
19 policy of the conspiracy as exemplified in the Manchu-
20 rian Incident and the China Affair was not without
21 opposition in Japan; respect for China's sovereignty
22 and for Japan's honor among nations was not without
23 adherents. SHIRATORI realized the futility of trying to
24 (UU-22. a. Ex. 3596-A, T. 35101-2.
25 UU-23. s. Summation F-111.)

maintain any longer the pretext of self-defense and
1 recognized that growing doubts as to the honesty of
2 Japan's "true intentions" in China were not being quieted
3 with such opiates as the promise of "local settlement."
4 In order to marshal support for the conspiracy it became
5 necessary to inflame the Japanese people with imagined
6 injustices at the hands of nations that had obstructed
7 the progress of the conspiracy. This, we submit, was
8 the conspiratorial role to which SHIRATORI chose to
9 devote his talents at this juncture.

10
11 UU-24. We lay special emphasis on his timely
12 threat in March 1938 that Germany, Italy and Japan would
13 be obliged to extend the scope of their existing alliance
14 (the Anti-Comintern Pact) so as to facilitate concerted
15 action against the powers that opposed them. This can
16 mean only that SHIRATORI was contributing to the con-
17 spiracy and to the negotiations in progress between
18 OSHIMA and Ribbentrop by preparing the people for a
19 general alliance aimed at nations and contingencies
20 other than Russia and Japan's alleged fear of Communism.
21 It is shown in the summation that Japan's actions in
22 China under the Anti-Comintern Pact indicate that as
23 far as Japan or the conspirators were concerned, they
24 were not too greatly frightened by either Communism
25 or the Comintern.
a.

(UU-24. a. Summation F-108.)

1 UU-25. SHIRATORI's rise to the fore as an
2 apologist for totalitarian principles and as a prota-
3 gonist of aggressive union with Germany and Italy was
4 not without at least attempted reward. It cannot
5 reasonably be supposed that War Minister ITAGAKI was
6 unaware of SHIRATORI's contributions to their common
7 cause when he recommended to Foreign Minister UGAKI in
8 June 1938 that SHIRATORI be appointed Vice-Foreign
9 Minister.^{a.} The same recognition of service rendered
10 to the conspiracy is implicit in the similar recommen-
11 dation to UGAKI by SHIRATORI's fellow propagandist,
12 OKAWA, Shumei.^{b.}

13 V. SHIRATORI as Ambassador to Italy.

14 A. Background Sketch of Related Activities
15 of the Conspiracy.

16 UU-26. This phase of SHIRATORI's career
17 must be viewed against the background of Japanese rela-
18 tions with the Axis in preparation for aggressive war.
19 Such relations and their significance are set forth
20 in the General Summation, Part III of the Conspiracy,
21 (hereinafter referred to as Summation) and will not be
22 repeated here except by reference when necessary to
23 give full meaning to specific actions of SHIRATORI.
24

25 (UU-25. a. Ex. 3791-A, T. 37743.
 b. Ex. 3794-A, T. 37760.)

UU-27. It suffices for present purposes to
1 note that the summation deals fully with the adoption
2 of the conspiracy as the national policy of Japan
3 through the decision of the Five Ministers' Conference
4 of 7 August 1936;^{a.} with recognition of the need for
5 an alliance with the Axis in order for Japan to pursue
6 her program of expansion;^{b.} with the choice of Germany
7 as an ally to gain European support before moving south
8 according to the plan of 7 August 1936;^{c.} with the
9 efforts of OSHIMA, beginning in 1934, to negotiate an
10 alliance with Germany and their culmination in the
11 Anti-Comintern Pact and the accompanying Secret Agree-
12 ment which converted the pact into a military alliance
13 directed specifically against the Soviet Union;^{d.} with
14 the distortion of that pact by the conspirators to
15 excuse continued military aggression in China;^{e.} and with
16 the ensuing new German-Japanese policy of increasingly
17 closer economic, cultural and political collaboration.^{f.}

19
20 B. SHIRATORI Supports Trade Preference for
21 Germany.

22 UU-28. The OSHIMA summation deals in some
23 detail with the controversy between the Japanese Army

24 (UU-27. a. Summation, F-22-23.
25 b. Summation, F-99.
c. Summation, F-100-102.
d. Summation, F-103-106.
e. Summation, F-108-109.
f. Summation, F-110-115.)

1 and the government regarding the extension to Germany
2 of preferential trade treatment in North China, and
3 with the fact that OSHIMA endeavored to alter his
4 government's opposition to the army's support of German
5 demands.^{a.} It is revealing that SHIRATORI joined with
6 OSHIMA and the army in favoring the proposed division
7 of spoils with their Nazi partner. In a memorandum to
8 his government on this subject, Wiehl, Director of
9 the Commerce Trade Bureau of the German Reich, noted
10 that SHIRATORI had given his support to the proposal
11 in an interview on 26 October 1938.^{b.} Again in his
12 report, Wiehl observed that while opposition was prin-
13 cipally among domestic economic circles "the army was
14 for it, also a part of the Foreign Service, SHIRATORI,
15 for example..."^{c.} This is only one more of the many
16 instances that will be shown where SHIRATORI attempted
17 to project himself into policy-making levels above his
18 official position in order to bolster conspiratorial
19 moves. It is obvious that as the newly-appointed
20 Ambassador to Italy, SHIRATORI had absolutely no offi-
21 cial connection, as distinguished from conspiratorial
22 interest, with the policy question of preferential
23 trade treatment for Germany.
24

25 (UU-28. a. OSHIMA Summation QQ-13.

b. Ex. 3811, T. 37900.

c. Ex. 3811, T. 37091.)

UU-29. Also bearing on the role in the con-
1 spiracy that SHIRATORI was to play as Ambassador to
2 Italy is the course of further negotiations to bring
3 Germany, poised for its aggressive thrusts over Europe,
4 and Japan, already involved in a major war of aggression
5 in China, together in a military alliance for the
6 furtherance of their common aggressive aims. Both
7 the General Summation and the OSHIMA Summation recount
8 in appropriate detail how OSHIMA and Ribbentrop in
9 January 1938 began discussions to strengthen the Anti-
10 Comintern Pact; how the Japanese General Staff approved
11 Ribbentrop's idea that a treaty be negotiated; how from
12 the inception of the negotiations the Japanese General
13 Staff advocated and proposed through OSHIMA a general
14 alliance aimed at all countries, as distinguished from
15 one applying only to the Soviet Union; how the matter
16 was taken up at a Five Ministers' Conference by the end
17 of August 1938; and how OSHIMA failed to inform Ribben-
18 trop of the full import of the instructions he received
19 as a result of the Five Ministers' Conference decision.
20 That OSHIMA, in line with the advice from the General
21 Staff, agreed with Ribbentrop in favoring an alliance
22 with Germany aimed at nations other than Russia is set
23 forth in the OSHIMA Summation.
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(UU-29. a. General Summation, F-119. OSHIMA Summation,
~~QQ-12-13.~~

b. OSHIMA Summation QQ-22-25.)

1 UU-30. Almost within the same week that the
2 Five Ministers' Conference considered the Ribbentrop
3 draft of the proposed alliance in late August 1938,
4 as previously mentioned, Foreign Minister UGAKI offered
5 SHIRATORI the post of Ambassador to Italy.^{a.} However,
6 because he was not formally appointed until 22 Septem-
7 ber 1938, and did not arrive in Rome until 29 December
8 1938,^{b.} SHIRATORI was not fully active in the negotiations
9 immediately upon his acceptance of the offer of appoint-
10 ment. Hence, continued reference is made to the acti-
11 vities of OSHIMA in these dealings in order to arrive
12 at the status quo at the time SHIRATORI officially
13 took up his duties in Rome.

14 UU-31. In becoming Ambassador to Germany in
15 October 1938, OSHIMA enjoyed, as did SHIRATORI, the
16 full support of War Minister ITAGAKI.^{a.} Reference is
17 made to the summation for the next sequence of events:
18 Germany's approach to Italy to join the alliance;
19 OSHIMA's transmittal to the Japanese Foreign Office
20 of the German draft of the treaty written by himself,
21 Ribbentrop, and Ciano; Foreign Minister ARITA's advice
22 that Japan would present a counter-proposal; and
23 OSHIMA's trip to Italy in mid-December to persuade
24

25 (UU-30. a. Ex. 3595, T. 35032.

b. Ex. 3595, T. 35034.

UU-31. a. OSHIMA Summation, (G-27-28.)

b.
Mussolini to enter the pact. The fact that the terms
1 of alliance discussed by OSHIMA in Rome did not restrict
2 the pact to Russia alone and included provisions not
3 acceptable to the Japanese Government is covered in
4 the OSHIMA Summation.^{c.}
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25)UU-31. b. Summation, F-121.
c. OSHIMA Summation, QQ-32-34.)

pose of detachment is wholly apparent in the light
 1 of close Italo-Japanese relations springing from
 2 their joint union in the Anti-Comintern Pact, from
 3 Italy's following the example of Germany and Japan
 4 in withdrawing from the League of Nations and from
 5 Italian good-will and economic missions to Japan;^{b.}
 6 and, above all, in view of SHIRATORI's own writings
 7 to persuade the people that Italy, Germany and Japan
 8 shared a common totalitarian ideology and that as
 9 "have not" nations they shared common expansionist
 10 aims at the expense of the democracies.^{c.}

11
 12 UU-33. SHIRATORI specifically denied^{a.} the
 13 truth of German Ambassador Ott's statement that he,
 14 SHIRATORI, "had taken up the post of ambassador
 15 purely in expectation that he would succeed in con-
 16 cluding an Italian-Japanese-German military alliance."^{b.}
 17 Later, on cross-examination, he again denied that he
 18 went to Rome with any concrete intention of promoting
 19 a treaty that would serve as the basis for the joint
 20 action among Japan, Germany, and Italy.^{c.} In a third
 21 denial he stated definitely that he did not go to
 22 Rome for the purpose of getting a military alliance.^{d.}

23 UU-32. b. T. 35089-90.

24 c. Ex. 3596-A, T. 35101-2; Ex. 3596-B, T. 35104-5.

25 UU-33. a. Ex. 3595, T. 35034; b. Ex. 498, T. 6082.

c. T. 35108; d. T. 35109.

1 UU-34. In support of his claimed vague
2 awareness of the situation, SHIRATORI stated that
3 Foreign Minister UGAKI did not even mention the pro-
4 posed treaty to him, nor did ARITA, Foreign Minister
5 at the time of his departure give him any instructions
6 when he left Tokyo. ^{a.} Witness UGAKI supported SHIRA-
7 TORI's position in this matter by stating that he had
8 not thought of SHIRATORI in connection with the pact
9 and that he had not discussed it with him. ^{b.} However,
10 it was brought out on cross-examination that Premier
11 KONOYE, who recommended SHIRATORI and who told him
12 about the alliance negotiations in the first place,
13 took over the Foreign Ministry portfolio from UGAKI
14 seven days after SHIRATORI's appointment as Ambassador. ^{c.}
15 Accordingly, we submit that UGAKI's connection with
16 SHIRATORI's selection was unimportant and remote except
17 for the formality of appointment. In view of SHIRA-
18 TORI's relationship with Prince KONOYE on this matter,
19 no significance can attach to the fact that Foreign
20 Minister ARITA did not amplify the information
21 SHIRATORI had received from the Prime Minister himself.
22

23 D. SHIRATORI Accepts Ambassadorship in
24 Order to Work for Alliance with Axis.

25 UU-35. Against these protestations that it
UU-34. a. Ex. 3595, T. 35033; b. Ex. 3580, T. 34909-10.
c. T. 34916.

1 was only by accident, as it were, that SHIRATORI ever
2 became involved in the abortive tripartite negotiations,
3 we have the other side of SHIRATORI's confused picture
4 of the situation. He testified that he decided to
5 accept the Ambassadorship after he had learned from
6 Prince KONOYE about the proposed treaty and had con-
7 cluded that the possible alignment of Japan with the
8 Axis Powers would cause England and America to modify
9 the attitude they had developed toward Japan since the
10 Manchurian Incident.^{a.} He reiterated this on cross-
11 examination when he agreed that he went to Italy
12 because he learned of the possibility of negotiating
13 an alliance with Italy and Germany, which he thought
14 would contribute to settlement of the China Incident.^{b.}
15 We submit that this version of the affair is in com-
16 plete agreement with our contention that SHIRATORI
17 went to Italy for the prime purpose of doing what he
18 could to form a military alliance that would in effect
19 be a loaded gun pointed at the heads of England and
20 America to hold them at bay while Japan settled the
21 China Incident. It is to be noted that the term
22 "settle the China Incident" is not so innocuous as
23 the words themselves might suggest. It is clear from

24 UU-35. a. Ex. 3595, T. 35033.
25 b. T. 35090-1.

1 all the evidence that in reality the phrase meant
2 to complete the ravishment of Chinese sovereignty
3 that had begun with the Manchurian Incident and had
4 progressed to what was then the "China Affair."

5 UU-36. If it is not to belabor unduly a
6 point of defense that was confused in the first
7 instance, attention is invited to the contradiction
8 in SHIRATORI's own later statement that when "the
9 nonaggression pact between Germany and Soviet Russia
10 was concluded, I saw no sense in staying any longer
11 in Europe."^{a.} Again, on cross-examination he admitted
12 that he immediately requested his recall to Tokyo as
13 soon as he saw that the possibility of a treaty was
14 defeated for the time being by the Russo-German Pact.^{b.}
15 In short, the bald facts established by his own state-
16 ments are that SHIRATORI went to Italy to assist in
17 forming an alliance with the Axis and then returned to
18 Japan the moment he saw he could not accomplish what
19 he had set out to do.

20
21 UU-37. SHIRATORI's assumed naivete about
22 collaboration with the Axis is again ridiculed by
23 Ott's telegram to his government 24 November 1938
24 (before SHIRATORI left Tokyo) describing SHIRATORI

25 UU-36. a. Ex. 3595, T. 35044.
b. T. 35092.

1 as being especially active in favor of the Anti-
2 Comintern policy and telling how he, Ott, was work-
3 ing through SHIRATORI to influence Premier KONOYE to
4 issue a strong expression of esteem for German policy. ^{a.}
5 The nature of the German policy that SHIRATORI was
6 willing to have his government embrace is too well
7 known to require citation or example. In the same
8 cable, Ambassador Ott noted the probability that
9 KONOYE's congratulatory telegram to Hitler resulted
10 from this influence. SHIRATORI denied the truth of
11 Ott's report. ^{b.}

12 E. SHIRATORI Enters Upon His Duties in Italy.

13 UU-38. It was at this point that SHIRATORI
14 arrived in Rome and entered actively in full partner-
15 ship in this phase of the conspiracy. The fact that
16 SHIRATORI worked in extremely close concert with
17 OSHIMA in the conduct of negotiations will appear in
18 the following pages. Even after Mussolini's decision
19 to enter the alliance, the negotiations continued in
20 the main to be carried on primarily with Germany,
21 the policy-deciding partner in the Axis. Witness
22 NAGAI, Mikizo, testified that "the Italian Government
23 practically left to Berlin the matter of the Tripartite
24 UU-37. a. Ex. 3826, T. 37983-4.
25 b. T. 35096.

1 Treaty;" that "there was not much in the way of ex-
2 change of views or negotiations between the Ambassador
3 and either Mussolini or Ciano"; and that "the part
4 Ambassador SHIRATORI played was confined mainly to
5 making suggestions or advancing views to the Foreign
6 Ministry in Tokyo."^{a.} Thus, SHIRATORI's own defense
7 establishes the significant fact that if he had been
8 content to function strictly within the limits of his
9 office, he might have had at this particular time no
10 more than passing contact with the negotiations. This
11 only serves to highlight our contention that the aims
12 of the conspiracy and not the requirements of his
13 position caused SHIRATORI to extend his activities
14 beyond the Italian scene, by aiding and abetting
15 at every possible turn the efforts of OSHIMA and the
16 army in Berlin and Tokyo to commit the Japanese
17 Government to an all-out military alliance.

18 UU-39. Early in January 1939 shortly after
19 SHIRATORI arrived in Rome, Mussolini advised Ribben-
20 trop that Italy would join the proposed alliance.^{a.}
21 The defense has been at great pains to present evidence
22 to the effect that Mussolini's decision to enter the
23 pact had been made independently of influence on the
24

25 UU-38. a. Ex. 3587, T. 34944.
UU-39. a. Ex. 497, T. 6061.

1 part of SHIRATORI. In our submission, such evidence
2 is valueless in so far as the conspiracy charges are
3 concerned, since it is no part of the prosecution's
4 case to prove that SHIRATORI persuaded Mussolini to
5 become a co-conspirator in the attempted alliance.
6 It is our position that SHIRATORI's guilt arises out
7 of the conspiratorial character of negotiations of
8 any kind with Italy and Germany for an alliance
9 designed to promote aggression and out of SHIRATORI's
10 activities in concert with OSHIMA, Mussolini, Ribben-
11 trop and the army group in Tokyo under ITAGAKI to
12 conclude an all-out military alliance without the
13 reservations desired by the Japanese government.

14 F. SHIRATORI Envisions Alliance Aimed at
15 All Nations.

16 UU-40. That SHIRATORI was not so inade-
17 quately informed as to the scope and purpose of the
18 proposed treaty as he would have the Tribunal believe^{a.}
19 is revealed in his expressions to Count Ciano,
20 Italian Foreign Minister. In the 7 January 1939
21 entry in his diary, Ciano recorded that the Japanese
22 Ambassador was greatly in favor of the alliance which
23 he regarded as a weapon to force Great Britain to
24 concede "the many things she owes to all of us."^{b.}
25

UU-40. a. Ex. 3595, T. 35034; b. Ex. 499-A, T. 6092.

1 The defense has emphasized that this meeting took
2 place before SHIRATORI was officially accredited as
3 Ambassador 10 January 1939.^{c.} The purpose of this
4 evidence, we assume, is to support a claim that no
5 responsibility can devolve upon SHIRATORI by reason
6 of private and unofficial conversation before his
7 formal installation as Ambassador. The immateriality
8 of this kind of defense evidence has been discussed
9 above. (UU-18 supra).

10 UU-41. There can be no more conclusive
11 showing of the fact that from the very outset SHIRA-
12 TORI envisioned and was prepared to work for a pact
13 aimed at nations other than Russia, despite the fact
14 that his government was attempting to limit the
15 alliance to the Soviet Union. It is incredible that
16 SHIRATORI would have been dispatched to Italy to
17 participate in negotiations for an alliance without
18 some knowledge as to what nations were to be the
19 objects of such an alliance.

20 UU-42. SHIRATORI denies the truth of Ciano's
21 report and because the statement attributed to SHIRA-
22 TORI was characteristic of Mussolini's frequent charges
23 against England, SHIRATORI invites the Tribunal to
24 believe that Ciano had actually quoted Mussolini and
25 UU-40. c. Ex. 3582, T. 34919-21.

1 not himself.^{c.} If consistency with past expressions
2 is to be the criterion of authenticity, it may be
3 pointed out in reply that the statement in question
4 is no less characteristic of SHIRATORI's own tirades
5 against the "have" nations, as already shown in
6 exhibit 3596-4.^{b.}

7 UU-43. If SHIRATORI lacked detailed informa-
8 tion on the progress of the negotiations up to the time
9 of his arrival, he was not long in ignorance because
10 OSHIMA came from Berlin to meet with SHIRATORI at
11 San Remo, Italy, in mid-January 1939, to discuss the
12 whole situation.^{c.} Thus, it is only logical to assume
13 that practically from the beginning SHIRATORI was
14 entirely familiar with the concept of the alliance
15 held by OSHIMA and the German collaborators as dis-
16 tinguished from the government's attitude in Tokyo.

17 UU-44. Meanwhile, the promised Japanese
18 counter-proposal mentioned previously had not yet come
19 from Tokyo. In answer to his inquiry at the end of
20 December 1938, OSHIMA was advised that because of
21 unexpected difficulties with Germany over naming
22 nations other than Russia as secondary objects of the
23 pact, a mission headed by ITO was being sent from

24 UU-42. a. Ex. 3595, T. 35036-7. b. T. 35101-2.
25 UU-43. a. Ex. 497, T. 6072.

1 Tokyo to convey and to explain the policy and in-
2 structions decided upon by Japan.^{a.} Ott's information
3 from Tokyo was that ITO was being sent because of
4 SHIRATORI's and OSHIMA's opposition to the expressed
5 desires of their government.^{b.}

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25 UU-44. a. Summation, F-115.
b. Ex. 500, T. 6094.

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1 G. SHIRATORI Advises Ciano Not to Accept
2 Japanese Counter-Proposal.

3 UU-45. SHIRATORI and OSHIMA evidently con-
4 cluded that the delay in Tokyo over the matter of naming
5 the objects of the pact spelled danger for the conspir-
6 ators' plan to have an unrestricted alliance. Only such
7 a conclusion would have prompted SHIRATORI to express to
8 Ciano his skepticism about the possibility of an early
9 conclusion of the alliance or so flagrantly to exceed
10 his authority as to state his belief that the Japanese
11 counter proposal would be a compromise proposal which
12 he advised Ciano not to accept. SHIRATORI does not deny
13 such a conversation but only accuses Ciano of "an unkind
14 interpretation" of his words which he remembers as being
15 to the effect that he was "afraid our counter-proposal
16 would be unaccentable to him, but that he did not have
17 to take it as the final word."^{a.} We submit that his
18 attempted answer is simply a matter of noting a distinc-
19 tion without making a difference and that it in no wise
20 affects the character of the evidence.
21

22 UU-46. The ITO Mission arrived in Berlin late
23 in February, 1939,^{a.} but it had stopped enroute in Italy
24 for three or four days to talk with SHIRATORI who then
25 followed the Mission to Berlin for joint discussions

(UU-45. a. Ex. 3595, T. 35038.)
UU-46. a. Ex. 3494, T. 33736.)

1 would resign and bring about a fall of the cabinet. b.

2 UU-48. SHIRATORI denies any recollection of
3 threatening to resign and attempts to answer the Ciano
4 statement by way of reductio ad absurdum. How, he asks,
5 in effect, could the resignation of an ambassador who
6 had no political backing at home have affected the life
7 of a cabinet or have altered the foreign policy of his
8 Government? The falsity of his denial of a threat to
9 resign and the accuracy of Ciano's statement on the
10 matter is demonstrated by ARITA's report that the Five
11 Ministers' Conference of 25 April 1939 considered an
12 urgent request which had come from OSHIMA and SHIRATORI
13 for their recall. a.
14 With respect to his modest claim of
15 having no political backing it may be said that SHIRA-
16 TORI conveniently forgets the strong support he drew
17 from War Minister ITAGAKI and the military machine as
18 well as the fact that he was chosen for his post in order
19 to qualify for the cabinet position of Foreign Minister
20 at a later date. As for the effect that the ambassadors'
21 resignation might have had upon the cabinet, we point
22 to Marquis KIDO's fear that their recall might even in-
23 fluence peace and order within the nation. b.
24 As for the
25 effect of the ambassadors' threatened action on the

(UU-47. b. Ex. 501, T. 6096.

UU-48. a. Ex. 3800-A, T. 37808.

b. Ex. 3800-A, T. 37808.)

1 government's foreign policy, the fact remains, as will
2 be shown later, that the Government did modify its
3 position as a result of the obstructionist actions of
4 SHIRATORI and OSHIMA.

5 UU-49. These events are further corroborated
6 by Ribbentrop's telegram to Ott, 26 April 1939, in which
7 he stated that OSHIMA and SHIRATORI had received instruc-
8 tions as to their government's wish to limit obligations
9 of assistance only to the case of a war with Russia;
10 that both ambassadors had informed him and Ciano only
11 confidentially and personally of such instructions; that
12 they had immediately refused of their own accord to pre-
13 sent such a fundamental change of the German-Italo
14 draft in Berlin and Rome; and that they declared they
15 would have to resign from their posts in the event of a
16 different decision of the Japanese Government. This
17 corroboration of all details of Ciano's statement by
18 Ribbentrop's independent report is further important in
19 relation to SHIRATORI's several attacks on the accuracy
20 of Ciano's diary entries.^{a.}

21 UU-50. The completely unorthodox action of
22 SHIRATORI and OSHIMA in flatly refusing to follow their
23 instructions prompted Foreign Minister ARITA to reaffirm
24 the government's position by saying that "no matter what
25 (UU-49. a. Ex. 3595, T. 35035-8.)

1 they (ambassadors to Rome and Berlin) might say, the
2 (Japanese) Government cannot cancel its decision. All
3 we have to do is to change the ambassadors if they are
4 going to rush to conclusions and say that the decision
5 (of the Japanese Government) will not do." ARITA
6 stated further that instructions had been wired to both
7 ambassadors to do as recommended by the Japanese Govern-
8 ment.^{a.}

9 I. SHIRATORI and OSHIMA Succeed in Forcing
10 Government to Modify Position.

11 UU-51. SHIRATORI and OSHIMA were partially
12 successful in their opposition to the proposals delivered
13 by the ITO Commission. Around the end of March or the
14 beginning of April, 1939, Japan reconsidered her position
15 and sent to the ambassadors new instructions containing
16 some modifications. The new draft of the treaty agreed
17 generally with the German-Italian draft but provided for
18 an explanation intended to reassure England, France, and
19 America.^{a.} In his telegram to Ott of 26 April 1939,
20 Ribbentrop stated that SHIRATORI and OSHIMA had again
21 told Tokyo that this wish of the Japanese Government was
22 also impossible and that they had again informed Ciano
23 and himself only confidentially and not officially. It
24 is worthy of note that the telegram relates that the week
25

(UU-50. a. Ex. 3797-4, T. 37773.
UU-51. a. Summation, F-125.)

1 previous to this SHIRATORI and OSHIMA met with Ribben-
2 trop in Berlin on the occasion of Hitler's birthday on
3 20 April 1939.^{b.} The defense has attempted to meet this
4 evidence of SHIRATORI's refusal to communicate officially
5 his government's proposal by reference to an entry in
6 the Ciano diary of 2 April 1939 in which Ciano notes re-
7 ceiving from SHIRATORI the Japanese answer on the Tri-
8 Partite Alliance. However, this does not contradict
9 prosecution evidence that the proposal was not trans-
10 mitted officially.^{c.} It is not contended that Ciano was
11 never apprised of the modification of the ITO proposal.

12 J. SHIRATORI and OSHIMA, Misrepresent Govern-
13 ment's View to Germany and Italy.

14 UU-52. According to Foreign Minister ARITA's
15 advice to the Emperor on 8 April, SHIRATORI and OSHIMA
16 had not only opposed their government negatively by re-
17 fusing to follow instructions but also affirmatively by
18 informing the German and Italian Governments that it was
19 the Japanese intention to fight in the event that Germany
20 and Italy should wage war with England and France. ARITA
21 protested that the ambassadors had acted without regard
22 to the wishes of the central authorities and that their
23 words and actions over-stepped their authority.^{a.} This
24

25 (UU-51. b. Ex. 502, T. 6101.
c. Ex. 3583, T. 34947.
UU-52. a. Ex. 3798-A, T. 37779.)

is corroborated by OSHIMA's admission that he advised
1 Ribbentrop that under the revision of the original ITO
2 proposal Japan accepted in principle the duty of war
3 participation in case of an attack on Germany and Italy
4 by countries other than Soviet Russia. b.

5 UU-53. At this juncture, it is important to
6 note the singleness of mind and purpose enjoyed by
7 SHIRATORI and OSHIMA with respect to the kind of alliance
8 they wanted to bring about. Witness KAWABE, Toroshiro,
9 who was present at the meeting between SHIRATORI and
10 OSHIMA in Italy in the early spring of 1939, testified
11 that the two ambassadors were generally agreed on funda-
12 mental ideas although there may have been differences
13 of opinion regarding diplomatic technique or procedure. a.
14 On cross-examination, OSHIMA fixed the time of this
15 meeting as about 2 April and admitted that they had with
16 them the instructions of January 23, which was the ITO
17 directive, and the later directive of 25 March, which
18 was the Japanese compromise proposal. At the same time
19 he testified that his advice to Ribbentrop regarding
20 Japanese war participation, above-noted, was given a few
21 days after his meeting with SHIRATORI. Presumably this
22 advice was in accordance with the modus operandi he and
23 SHIRATORI had agreed upon.
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(UU-52. b. T. 34136.
UU-53. a. Ex. 3496, T. 33778.)

1 K. SHIRATORI and OSHIMA Push Japan Nearer
2 to All-out Military Alliance

3 UU-54. The summation describes the effect
4 that the recalcitrance of SHIRATORI and OSHIMA had on
5 the situation in Tokyo where there had always existed
6 some differences of opinion as to the conduct and
7 scope of the negotiations. Their obstructionist
8 tactics kept the door open, so to speak, for continued
9 pressure by War Minister ITAGAKI and others among the
10 conspirators who favored outright military alliances.
11 Continued conferences resulted in the compromise
12 embodied in the so-called HIRANUMA Declaration of
13 4 May 1939. In brief, that declaration provided that
14 Japan would support Italy and Germany even in the case
15 of an attack by a nation other than the Soviet Union
16 and that such support would be political and economic
17 and, to the extent possible, military. While Japan
18 was not in a position at that time to offer practical
19 and effective military aid, such support would be
20 given when circumstances permitted.^{a.} It is entirely
21 fair to say that this further concession reflected
22 in the HIRANUMA Declaration resulted fundamentally
23 from the delays forced by the opposition of SHIRATORI
24 and OSHIMA. The net effect of their actions had
25

UU-54. a. Summation F-126

1 actually been to keep Japan from dealing officially
2 with Italy and Germany and thus, as we have said, the
3 door was never completely closed on the kind of an
4 alliance that SHIRATORI and OSHIMA visioned as best
5 promoting the aims of the conspirators.

6 UU-55. In the face of SHIRATORI's denial
7 that he ever violated any instructions of his govern-
8 ment,^{a.} there is cause for wonder why the Five Ministers!
9 Comerence decided to send the HIRANUMA Declaration
10 to Hitler and Mussolini through the Italian and
11 German Ambassadors in Tokyo rather than through SHIRATORI
12 and OSHIMA.^{b.} In the light of the ambassadors' past
13 conduct it seems quite apparent that this departure
14 from the former procedure was adopted to insure that
15 the Italian and German Governments would receive the
16 proposal officially even though it might not meet
17 the personal approval of SHIRATORI and OSHIMA.

18 L. Again SHIRATORI and OSHIMA Refuse to
19 Transmit Instructions of Their Government and Force
20 Further Concessions

21
22 UU-56. Ott's telegram of 27 May 1939 to his
23 government indicates that the Army group in Tokyo
24 continued to press for automatic entry into a state of

25 UU-55. a.Ex. 3595, T. 35,040
" b.Ex. 3800-A, T. 37,809

1 war against England and France. The decision of
2 the Five Ministers' Conference of 20 May 1939, which
3 made entry into war against England and France dependent
4 upon the circumstances at the time and which the Army
5 opposed, was telegraphed to the ambassadors in Rome
6 and Berlin, but again SHIRATORI, in concert with
7 OSHIMA, refused to transmit the decision as instructed.^{a.}
8 That this high-handed conduct on the part of SHIRATORI
9 and OSHIMA combined with Army insistence to produce
10 results favorable to the conspiracy is evident from
11 the fact of the Cabinet decision on 5 June 1939 agreeing
12 to participate in a German war against England and
13 France with the reservation that Japan should have
14 the right to choose a favorable time.^{b.}

15 UU-57. Despite the fact that the conspirators
16 in Tokyo and SHIRATORI and OSHIMA in Rome and Berlin
17 had succeeded over a period of months in forcing the
18 government to abandon first one stand and then another,
19 the government's capitulation to the conspirators was
20 too long delayed. The circumstances surrounding the
21 conclusion of the Non-Aggression Pact between Germany
22 and the Soviet Union on 23 August 1939, its fatal effect
23 upon this phase of the Tripartite negotiations, and
24

25 UU-56. a. Ex. 3746, T. 37,409; Ex. 3803-A, T. 37,828
" b. Ex. 614, T. 6793

1 OSHIMA's refusal to file a timely protest to the
2 German action in concluding the pact is outlined
3 in the summation. ^{a.}

4 UU-58. The summation further traces the
5 course of developments following the Russo-German
6 Pact and shows that the termination of the tripartite
7 negotiations was to be only a temporary defeat of the
8 conspirators' plan to join the Axis in a drive for
9 world domination. ^{a.} The negotiations during this
10 stage resulted in one conclusion of transcendent
11 importance--namely, the conviction that Axis assistance
12 was necessary for the successful settlement of the
13 China Incident, which in turn would pave the way for
14 the ultimate accomplishment of the conspiracy's
15 cherished New Order in East Asia. The fact emerged
16 from these negotiations that Germany was interested only
17 in a strong military alliance aimed at all nations,
18 since only such a pact would further her own program
19 of aggression. It is pointed out in the summation
20 that the validity of our charge of conspiracy is not
21 affected by the fact that some of the conspirators
22 judged that the time was not ripe to yield to German
23 demands in this respect. ^{b.} That these negotiations
24 substantially advanced the conspiracy in the sense that
25

UU-57: a. Summation F-128-9

UU-58: a. Summation F-129-32

" b. Summation F-123

1 they settled many preliminary matters, even though
2 failing final realization, is seen from the remarkable
3 speed with which the ultimate alliance was concluded,
4 as will be shown subsequently. Through these dealings,
5 Japan, Germany and Italy found themselves in broad
6 agreement as to the general nature of assistance each
7 could render to the others in their respective programs
8 of expansion by force or threat of force.

9 THE PRESIDENT: We will recess for fifteen
10 minutes.

11 (Whereupon, at 1045, a recess was
12 taken until 1105, after which the proceed-
13 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Sandusky.

4 MR. SANDUSKY: M. SHIRATORI's Attempted
5 Defense of Conduct Rebutted by Evidence.

6 UU-59. SHIRATORI makes several submissions
7 calculated to justify the so-called abortive negotia-
8 tions and his participation in them.^a Because of
9 the high importance of this matter, his contentions
10 will be treated with some particularity.

11 UU-59a. First of all, he tells us, he did
12 not want the pact for its own sake but only as a
13 diplomatic maneuver to force England and America to
14 withdraw support from China so that Japan could
15 conclude the Incident. Even if it were true that he
16 had no other motive in mind, we submit that his
17 attempt to coerce Britain and America to abandon
18 China in her resistance to Japanese aggression would
19 not constitute a defense since his actions were
20 still designed to further the over-all conspiracy.
21 The desire to conclude one phase of conspiratorial
22 action cannot be accepted as justification for enter-
23 ing another phase of the conspiracy. The evidence,
24 however, shows that he was not willing to regard the
25 UU-59.

a. Ex. 3595, T. 35040.

1 alliance as merely a diplomatic device, as will be
2 seen from his opposition to the announced intentions
3 of his government to settle the Tientsin Affair in
4 June-July 1939 on the basis of concessions offered
5 by Great Britain.^a In his own words SHIRATORI told
6 how he remonstrated with his government on two occa-
7 sions when it appeared that Foreign Minister ARITA was
8 inclined to deal with Great Britain in terms of
9 peaceful negotiations. He declared his position as
10 follows: "In order to establish a new order in
11 China today we must drive out from China the old
12 order which is represented by Britain. Therefore, I
13 believe that Japan should conclude a treaty as soon
14 as possible with Germany and Italy in opposition to
15 Britain and France."^b Thus, it is clearly demonstrated
16 that SHIRATORI was not satisfied with simply the
17 fruits of diplomatic intrigue and that he actually
18 wanted a pact against Britain and France for its own
19 sake. His contention that there was no opposition to
20 the Government's policy in attempting to limit the
21 proposed alliance to the Soviet Union looks more
22 than strange in the light of the evidence discussed
23 in this section of this summation regarding the

24 UU-59a.

25 a. T. 35112-5.

b. Ex. 2294, T. 16045, T. 35115.

1 successive acts of obstruction on the part of
2 SHIRATORI, OSUIMA, ITAGAKI, and the army group.
3 In discussing the nature of the pact, SHIRATORI
4 carefully limits himself to the text of the treaty
5 and dismisses as a "trivial matter" the months of
6 controverse that raged over the secret accessory
7 reservations regarding Britain and France. It is of
8 no consequence that the public text contained the
9 conventional provision for defense against unprovoked
10 attacks by nations not party to the pact since the
11 real purpose of the pact and the true intentions
12 of the parties are to be read from the accompanying
13 secret agreements proposed by each party. Though
14 SHIRATORI confines himself literally to saying that
15 the text was a "weak and harmless document," he
16 invites the inference that the treaty as a whole,
17 which would include the secret reservations, was
18 never anything more than "weak and harmless." To
19 dispel any illusions on that point it is sufficient
20 to refer to the final concession in the Cabinet
21 decision of 5 June 1939 that Japan would enter the
22 war against Britain and France provided she could
23 choose the time of entry.^c In our view, his state-
24 ment that there was early agreement on the text of
25 UU-59a.

c. Ex. 614, T. 6793; III-56, supra.

1 the treaty, as distinguished from the secret
2 reservations as to operation of the pact, is without
3 significance.

4 UU-59b. SHIRATORI's submission that the
5 reservations proposed by Japan in regard to England
6 and France were largely accepted by Germany tells
7 only a small part of the story. But no one, save
8 OSHIMA or ITAGAKI, knows the rest of the story better
9 than SHIRATORI. We refer to the successive moves
10 by which these co-conspirators forced their govern-
11 ment to recede one by one from the reservations Japan
12 had sought to include in the ITO proposal in Febru-
13 ary 1939^a in the April modification of the ITO
14 proposal,^b in the HIRANUMA Declaration and counter-
15 proposal in May,^c and in the crowning but belated
16 concession in the 5 June Cabinet decision.^d Far
17 from being a defense of any kind, the fact that the
18 parties did come closer to agreement is eloquent
19 testimony of the effectiveness of the opposition of
20 SHIRATORI and his fellow-conspirators. In view of
21 the evidence on the subject,^e we scarcely need
22 dignify by answer SHIRATORI's bland assertion that
23

24 UU-59b.

25 a. UU-47, supra.

b. UU-51, supra.

c. UU-54, supra.

d. UU-56, supra.

e. UU-40, 45, 47, 49-52, 56,
supra.

1 in no instance did he ever act contrary to instruc-
 2 tions. Though his sense of duty to the conspiracy may
 3 have distorted his sense of official decorum, the
 4 fact remains that his conduct called down upon him
 5 the wrath of his own Emperor, saying that "it was an
 6 infringement upon his supreme authority for the two
 7 ambassadors abroad /SHIRATORI and OSHIMA/ to express
 8 /Japan's/ intentions of participating in war, a
 9 matter with which they were not concerned. . ." ^{f.}

10 VI - CONCLUSION OF THE TRIPARTITE PACT.

11 A. SHIRATORI Hastens Back to Japan to
 12 Continue Working for Alliance.

13 UU-60. The ink was not more than dry after
 14 signing the Russo-German Pact, figuratively speaking,
 15 when SHIRATORI requested his recall to Tokyo because
 16 as he says, "I saw no sense in staying any longer in
 17 Europe." ^{a.} So determined was he to leave the ground
 18 that had become barren for the seeds he had come to
 19 sow that he insisted upon his recall four times before
 20 it was finally granted. ^{b.} This was no matter of idle
 21 pique on SHIRATORI's part. He stated his reasons to
 22 von Plessen, Councilor of the German Embassy in Rome,
 23 with a straightforwardness that was not exhibited
 24

25 UU-59b.

f. Ex. 3798b, T. 37784.

UU-60.

a. Ex. 3595, T. 35044.
 b. Ex. 223, T. 16006.

1 before this Tribunal, when he told him that he belonged
2 to a circle of Japanese that had been trying for a
3 long time to induce their government to conclude an
4 alliance with Germany. Since he had been unable to
5 realize such an alliance, he was returning to Japan
6 because he believed he could be of more use in pro-
7 moting an alliance there than he could be in Rome.^{c.}
8 In this conversation he was simply reaffirming what
9 he had previously told Mackensen, German Ambassador
10 in Rome. In reporting their conversation of 2
11 September 1939, Mackensen stated that SHIRATORI
12 expressed the opinion that the fall of the HIRANUMA
13 Cabinet gave promise for successful continuation of
14 the stalled negotiations for rapprochement with the
15 Axis Powers. SHIRATORI told him that it was for the
16 very purpose of being able personally to work more
17 effectively than was possible in Rome that he was
18 returning to Tokyo.^{d.}

19 UU-61. In the same report, Mackensen said
20 that SHIRATORI would particularly welcome an opportu-
21 nity to have a detailed talk with the German Foreign
22 Minister on his homeward trip. Presumably, this was
23 to be his first major step in carrying on for the
24

25 UU-60.

c. Ex. 2232, T. 16004-5.
d. Ex. 2232, T. 16003.

1 conspiracy from the point where the government had
2 terminated the negotiations. The defense has sensed
3 the significance of this desire to talk over matters
4 with Ribbentrop, as is evident from SHIRATORI's
5 attempt to reverse the situation so as to place the
6 request as coming from Ribbentrop to him through
7 von Plessen.^a Additional evidence has served to
8 disprove the SHIRATORI version of this incident. The
9 sequence of events now appears to be this: On 2 Sep-
10 tember 1939, SHIRATORI expressed a desire to Mackensen
11 to talk with Ribbentrop on his way home.^b Mackensen
12 apparently advised Berlin of the desire because on
13 4 September 1939, Weiszacker, German Secretary of
14 State, wired Mackensen to "inform SHIRATORI that the
15 Reich Foreign Minister will gladly see him at the
16 given time in Berlin."^c This has none of the appear-
17 ances of a request from Ribbentrop that SHIRATORI
18 return to Japan by way of Berlin in order that
19 Ribbentrop might see him. On the same day, 4 Septem-
20 ber, von Plessen reported that when he saw SHIRATORI
21 and mentioned to him his wish to speak to the German
22 Foreign Minister, SHIRATORI replied that his travel
23 plans were not yet definite.^d Here again, there is

24
25 UU-61.

a. Ex. 3595, T. 35044-5. c. Ex. 3827, T. 37986.
b. Ex. 2232, T. 16003. d. Ex. 2232, T. 16008.

1 no indication of the request having come from
2 Ribbentrop. Finally, on 9 September, Mackensen
3 cabled Berlin that he had informed SHIRATORI, in
4 accordance with Weisacker's telegram of 4 September,
5 that Ribbentrop would see him, but that SHIRATORI had
6 in the meantime dropped the idea of returning via
7 Siberia. He expressed SHIRATORI's regret at not
8 being able to see Ribbentrop again and said that
9 SHIRATORI was planning to ask Ambassador OSHIMA, who
10 was to come to Rome in a few days, to transmit to the
11 Reich Foreign Minister what he, SHIRATORI, had wanted
12 to state to him personally.^e Detailed attention has
13 been given to this particular incident not only for
14 the purpose of establishing SHIRATORI's determination
15 to continue a kind of private negotiation with the
16 German Government but also for the purpose of demon-
17 strating the convenient character of SHIRATORI's
18 recollections and of his attempted distortions of
19 contemporaneous reports on his activities.
20

21 B. SHIRATORI Attempts to Balk Japanese
22 Protest of Russo-German Pact.

23 U-62. In his effort to chart anew the course
24 of the conspiracy after it had run aground on the
25

UU-61.

e. Ex. 3827A, T. 37986-7.

Scylla of the Russo-German Pact, SHIRATORI was quick
1 to see the necessity of avoiding the Charybdis of an
2 irremediable rupture with Germany because of the pact.
3 SHIRATORI himself related to von Plessen that when he
4 received word of instructions to OSHIMA to file a
5 protest to Germany's action in concluding the pact he
6 telephoned Berlin in order to prevent the protest
7 action if possible. He was not able to reach OSHIMA,
8 but when OSHIMA returned to the Embassy and found
9 news of SHIRATORI's telephone call he then reported
10 to Tokyo that he considered the protest inopportune.^{a.}

12 UU-63. SHIRATORI admits that he once more
13 attempted to counter his government's instructions but
14 explains that he felt sorry for OSHIMA and thought it
15 too cruel to make him "drink boiling water."^{a.} We
16 observe that his intention was commendable as a
17 gesture of friendship but that his explanation is
18 not persuasive as a piece of evidence. As for his
19 unsupported claim that he suggested to Foreign
20 Minister ARITA that he present the protest himself
21 to Ambassador Ott, there is this to be said: It was
22 obvious that a delay in filing the protest would rob
23 the protest of much of its sting. Even if ARITA were

25 UU-62.

a. Ex. 2232, T. 16006.

UU-63.

a. Ex. 3595, T. 35045.

1 willing to depart from the usual diplomatic procedure
2 in this instance it would have afforded some delay;
3 if he were not willing, which was more likely, there
4 would still be time lost in the forwarding of new
5 instructions.

6 UU-64. In his talk with von Plessen,
7 SHIRATORI in effect gave a blue print of the form
8 his future activities to revitalize negotiations with
9 the Axis would take. Always the opportunist, SHIRA-
10 TORI saw that changed circumstances had created the
11 need for amicable adjustment of Russo-Japanese
12 relations. He told von Plessen of instructions sent
13 to the Japanese Ambassador in Moscow to approach the
14 Russian Government about a settlement of pending
15 problems. SHIRATORI expressed the opinion that the
16 only way to secure a nonaggression pact with Russia
17 was to do so through German mediation. He had further
18 proposed to OSHIMA, on his own responsibility and
19 without instructions from Tokyo, that he, OSHIMA,
20 should request Germany's good offices in this matter.
21 In speaking of the European conflict that had just
22 broken out, SHIRATORI observed that England had sup-
23 planted Russia as the chief enemy to be beaten. He
24 reaffirmed that the basic policy of Japan was to
25 establish a New Order in East Asia and noted that this
involved the expulsion of England from China.

UU-65. In his cable of 9 September 1939,
1 Ribbentrop outlined to Ott his discussion with OSHIMA
2 regarding further development of German-Japanese rela-
3 tions. Ribbentrop pointed out that Japan's fate con-
4 tinued to be linked with Germany's fate, that victory
5 by the democracies would put an end to Japanese ex-
6 pansion and take away her position in China, that
7 settlement of Russo-Japanese difficulties would enable
8 Japan to extend her power in East Asia and to pene-
9 trate to the south. OSHIMA agreed with Ribbentrop's
10 statements and said that the Japanese Army was doubt-
11 lessly in favor of an understanding with Russia and
12 there was prospect of this move being made a part of
13 Japanese foreign policy. Ribbentrop then told Ott that
14 SHIRATORI would soon return to Tokyo and would also
15 work along the lines of German-Japanese cooperation
16 that he had indicated. SHIRATORI dismisses his assur-
17 ances to the Germans as being mere diplomatic niceties.
18 If that be so, then it is indeed strange coincidence
19 that SHIRATORI's activity upon his return to Japan be-
20 came in all ways a fulfillment of these earlier assur-
21 ances. SHIRATORI returned to Tokyo on 13 October 1939
22 and was officially released from his ambassadorship to
23 Italy and placed on the ambassadorial waiting list on
24
25

9 January 1940.^{a.}

C. SHIRATORI Tries to Recover Public
Support for Alliance with Axis.

1
2 UI-66. After his return to Japan, SHIRATORI
3 wasted no time in reinstating himself in his old role
4 as spokesman for the conspiracy. He admitted giving an
5 interview to the press immediately after his arrival
6 in Japan in which he spoke in favor of the old alliance
7 policy even though the government had ceased negotia-
8 tions.^{a.} He then began a series of lectures and articles
9 of vituperative character designed to shape public
10 opinion in favor of the program of aggressive expan-
11 sion visualized by himself and his co-conspirators.
12 Since this program could be realized only by acting in
13 concert with Axis aggression against the democracies,
14 SHIRATORI'S consistent theme was that the battle against
15 western powers was as much Japan's battle as it was
16 Germany's and Italy's. In an address in November 1939,
17 SHIRATORI spoke on the attitude Japan should take toward
18 the European war. He defended Germany for having
19 brought about the failure of the tripartite negotia-
20 tions and said Japan was in part responsible because
21 she had sought to settle the China Affair by coopera-
22 tion with Britain. He attempted to counter the resent-
23 UI-66. a. T. 35092.
24
25

1 ment that had risen against Germany by pointing out
2 that both Germany and Italy were still offering friend-
3 ship to Japan, and that Japan must respond to their
4 overtures. He thought that by careful maneuvering the
5 European war could be developed in favor of Japan. He
6 assured the people that there would be a German victory
7 and hence there would be no danger for Japan in fight-
8 ing on the side of Germany. b.

9 UU.67. Again in December 1939, SHIRATORI
10 carried on his propaganda program with an article on
11 the necessity of a German-Italy-Japan Alliance. He
12 went back to the theme of "have" and "have not" nations
13 that he had borrowed from the Nazis in his propaganda
14 attack in March 1938, as seen in exhibit 3596-A. He
15 admitted that Japanese foreign policy calling for an
16 adjustment of the status quo to improve the lot of the
17 "have not" nations was actually established when Japan
18 embarked on her continental policy with the Manchurian
19 Incident. He assailed those people who were hesitating
20 as to whether Japan should continue her program for
21 establishing a New Order in East Asia and also those
22 who wanted Japan to devote herself entirely to the
23 China affair. b.

24 UU-66. b. Ex. 2234, T. 16036-43

25 UU-67. a. T. 35101-2

b. Ex. 2234, T. 16027

D. SHIRATORI Works for Downfall of
1 Cabinet and Continues Cooperation with German Embassy

2 UU-68. SHIRATORI's activities were not limi-
3 ted to his efforts to mold public opinion in line with
4 the aims of the conspiracy but included political
5 machinations to bring about the downfall of the ABE
6 Cabinet because of its distrust of collaboration with
7 the axis. On 31 December 1939, Ambassador Ott report-
8 ed to the German Foreign Ministry that Japanese affili-
9 ation with any of the European power groups was not to
10 be expected for the time being under the present cabi-
11 net. He said that according to the views of Ambassa-
12 dors OSHIMA and SHIRATORI "who are working hard for
13 the overthrow of the present cabinet, two or three
14 transitional cabinets would be needed to bring about
15 such a change of course."^{a.} Ott's telegram of 23 Janu-
16 ary 1940 reporting his endeavors to bring about the
17 release of some German Nationals who had been arrested
18 again shows SHIRATORI acting in his self-appointed
19 role as unofficial counsel to the German Embassy. Ott
20 mentioned that he was employing tactics corresponding
21 to the urgent advice of Ambassadors OSHIMA and SHIRATORI.
22 The relative unimportance of this incident serves to

23
24
25 UU-68. a. Ex. 3503-A, T. 33940

1 emphasize the closeness of SHIRATORI's cooperation
2 with the German Embassy.

3 UU-69. SHIRATORI was never long absent from
4 the propaganda front. In February 1940 he again took
5 the rostrum to discuss the Soviet-German coalition
6 and its relation to Japan. Once more he called for a
7 treaty with Germany and Italy in opposition to Britain
8 and France, and once more he defended the German ac-
9 tion in the pact with Russia and suggested that Ger-
10 many could mediate Russo-Japanese problems. Extolling
11 the glories of Germany and Italy and citing the mili-
12 tary power of the Axis, SHIRATORI warned the people
13 against any Japanese compromise with the old forces --
14 Britain and France. About this time, late February
15 1940, the Duke of Koburg came to Japan accompanied by
16 Heinrich Stahmer, Ribbentrop's Special Envoy. This
17 trip was ostensibly made for the purpose of bringing
18 German felicitations to Japan on the occasion of the
19 2600th Anniversary of her founding. A report on 23
20 February 1940 from Ott and Stahmer to the German
21 Secretary of State told that Stahmer had seen OSHIMA,
22 SHIRATORI, and others and had found them "in an un-
23 changed friendly attitude and ready for every support."^{2.}
24

25 UU-69. a. Ex. 511, T. 6141

1 UU-70. On 12 June 1940 Ambassador Ott wired
2 his government that the Embassy was still trying to
3 stir up anti-American feeling among the Japanese people
4 by influencing the press and leading political personali-
5 ties. Ott said that he himself had expressed to politi-
6 cal leaders his opinion that the interests and activi-
7 ties of America in the Pacific made a conflict between
8 Japan and America unavoidable in the long run. He
9 added significantly that "in confidential cooperation
10 with the Embassy, Ambassadors OSHIMA and SHIRATORI
11 and circles closely connected with them had operated
12 in the same direction.^{a.} The defense has attempted to
13 impeach this telegram, as well as many other Ott tele-
14 grams, by an ex parte statement from Ott in question
15 and answer form.^{b.} Because of the wide scope of the
16 Ott interrogatory, it will be treated separately at a
17 later point in this summation.^{c.}

18 UU-71. In order to illustrate the joint
19 endeavors, of the German Embassy and SHIRATORI to in-
20 cite the Japanese people Ott might well have pointed
21 to the contemporaneous publication (June 1940) of an
22 article by SHIRATORI discussing the trend of the war.
23 This time SHIRATORI approached the problem by express-

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25 UU-70. a. Ex. 516, T1 6152-3
 b. Ex. 3579, T. 34849-904
 c. UU-88-92, Infra

1 ing the fear that unless Japan did something about
2 joining forces with Germany, there was danger that
3 Germany would dispose of the Asiatic colonies of the
4 Allies without regard to Japan. He then berated those
5 who were misguiding Japan by favoring Britain and
6 America instead of Germany and Italy. In arguing that
7 Germany owed consideration to Japan, SHIRATORI pointed
8 out that Japanese-American wrangling over the China Affair
9 had made America unable to participate in the European
10 conflict. ^{c.} The fact of SHIRATORI's continued drive
11 to bend public opinion to the desires of the conspiracy
12 is again illustrated by his advocacy of a non-aggres-
13 sion pact with Russia in an interview given to the news-
14 paper Yomiuri.^{b.}

15
16 E. SHIRATORI Calls for Overthrow of
17 YONAI Cabinet.

18 UU-72. At the same time SHIRATORI was also
19 working to accelerate the passage from power of the
20 transitional cabinets he had previously seen as being
21 necessary before affiliation with the Axis could be
22 accomplished. On 18 June 1940 SHIRATORI gave a speech
23 at a round table conference of the League for the
24 Consummation of the Sacred War in which he discussed

25 UU-71. a. Ex. 2234, T. 16053-6
b. Ex. 523, T. 6177

the need for reorientation of Japan's foreign policy.

1 Clearly indicating that the reorientation he had in
2 mind was an alliance with Germany, he expressed fear
3 that Japan had already missed the opportunity. . He
4 said that he could not entertain any hope for a change
5 of policy "as long as the persons who posed the propo-
6 sition of a Japan-Germany-Italy military alliance re-
7 main to hold the ministerial posts in the cabinet."^{a.}

8 On cross-examination SHIRATORI denied that there was
9 any instance of his opposing the policy of the YONAI-
10 ARITA Cabinet and he elected to have no recollection
11 of this speech insinuating the need to overthrow the
12 of this speech insinuating the need to overthrow the
13 YONAI Cabinet.^{b.}

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24 UU-72.

25 a. Ex. 3820, T. 37994-5.
b. T. 35123.

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1 UU-73. The summation describes how the
2 group in Japan friendly to Germany desired that a
3 new government be formed under KONOY which would
4 maintain or increase tension with the democracies,^a
5 and explains how the fall of the YONAI Cabinet was
6 brought about on 16 July 1940.^b The summation also
7 sets forth that the succeeding KONOYE Cabinet adopted
8 rapprochement with the Axis as its foreign policy and
9 describes the initial steps taken to reopen alliance
10 negotiations with Germany.^c In press interviews both
11 SHIRATORI and OSHIDA had approved MATSUJOKA's appoint-
12 ment and expressed themselves as expecting a new
13 foreign policy to result.^d

14 UU-74. Ever mindful that a reorientation of
15 foreign policy in the direction of an alliance with
16 Germany could be more easily accomplished with pub-
17 lic support than without it, SHIRATORI used a forum
18 meeting in July 1940 to emphasize that Japan must
19 necessarily join the course followed by Germany and
20 Italy. He pointed out that Japan had already aided
21 Germany and Italy by weakening Britain's and France's
22 position in the Orient and by checking the United
23

24 UU-73.

- 25 a. Summation F-133
 b. Summation F-130
 c. Summation F-140-3
 d. Ex. 536, T. 6262

1 States in forcing her to concentrate her power in
2 the Pacific. He lamented on the fact that some
3 leaders in Japan were still trying to improve rela-
4 tions with the United States and rebuked them for
5 following a course contrary to Germany's intentions.^a

6 F. SHIRATORI Helps to Establish New
7 Totalitarian Structure for Japan

8 UU-75. SHIRATORI's zealous service as a pro-
9 ponent of totalitarianism was recognized by the new
10 government and resulted in his appointment as repre-
11 sentative for foreign affairs on a commission of
12 national leaders that was established in August 1940
13 to prepare the adjustment of state affairs on an
14 authoritarian model.^a In making a report of this to
15 his government on 23 August 1940, Ott noted that
16 the commission consisted mostly of followers of the
17 reform movement and of the policy of cooperation
18 with the Axis Powers that was constantly demanded by
19 this reform element. In his interrogatory, Ott
20 attempted to repudiate his report, which was con-
21 temporaneous with the incident, by claiming that it
22 was based on erroneous information.^b
23

24 UU-74.

a. Ex. 2234, T. 16,056

25 UU-75.

a. Ex. 548, T. 6297

b. Ex. 3574A, T. 34877-8

1 UU-76. Both for the purpose of establishing
2 SHIRATORI's membership in such a committee and of
3 demonstrating the falsity of Ott's denial, we refer
4 to the testimony of ARLA. He stated that on 22
5 August 1940 (the day preceding the date of Ott's
6 report) he was nominated as a member of the Arrang-
7 ing Committee for the New National Structure and
8 that the Imperial Rule Assistance Association was
9 later organized on the basis of the report of that
10 committee. He further said that SHIRATORI was among^a
11 those originally invited to serve on the committee.
12 We reject as unreasonable any suggestion that Ott
13 was not fully aware of this widely heralded move to
14 reform Japan's internal structure along totalitarian
15 lines.

16
17 G. SHIRATORI Becomes Advisor to
18 Foreign Minister.

19 UU-77. The new government of Prince KONOYE,
20 SHIRATORI's long-time political patron, did not fail
21 to reward his yeoman services. So strong was
22 SHIRATORI's position, as he himself admits, that it^a
23 was rumored he would be the next Foreign Minister.
24 Though this did not come to pass, SHIRATORI was able

25 UU-76. a. Ex. 3594, T. 35,020-1
UU-77. a. Ex. 3595, T. 35,047

1 to inform Ott within two weeks of the formation of
2 the new cabinet that he had declined the post of
3 Vice Foreign Minister but would be appointed Advisor
4 to the Foreign Minister, a position in which he be-
5 lieved he could exercise a far reaching influence.
6 He was in fact appointed as Advisor to the Foreign
7 Minister on 28 August 1940.^c

8 UU-78. SHIRATORI has gone to great lengths
9 to persuade the Tribunal that this position was only
10 a sinecure, that he had no functions to perform and
11 that important documents were hidden from him. In
12 the light of attending circumstances, we submit that
13 this contention falls with the weight of its own
14 unreasonableness. The picture of a man who had con-
15 tributed as largely to Axis-Japanese accord as SHIRA-
16 TORI had, and the picture of a political pensioner
17 from whom it was necessary to hide details of negoti-
18 ation with the Axis simply do not fit into the same
19 frame. It will be remembered that even before the
20 cabinet was completed KONOYE, MATSUOKA and TOJO had
21 drawn up a foreign policy that conformed in all ways
22 to the policy SHIRATORI had been preparing the Japan-
23 ese public to accept.^a Significant also is the fact

24
25 UU-77. b. Ex. 538, T. 6265
c. Ex. 3575, T. 34,949
UU-78. a. Summation F-139

1 that in the face of wholesale dismissal of senior
 2 diplomats in order to secure the new foreign policy
 3 against internal opposition SHIRATO I not only was
 4 not dismissed but was raised to the position of
 5 Advisor to the Foreign Minister. This position car-
 6 ried Shin-Nin rank, which was the highest in the
 7 official hierarchy.^b A further fact militating against
 8 the claim that MATSUOKA deliberately sought to rele-
 9 gate SHIRATORI to the limbo of diplomatic inactivity
 10 is his appointment within the same week as Foreign
 11 Office Representative on the Preparation Committee
 12 for the IRAA.^c

13 H. Conspirators Finally Achieve
 14 Military Alliance with Axis.

15 UU-79. The decision of the Four Ministers'
 16 Conference of 4 September 1940 and its approval by the
 17 Liaison Conference of 19 September for the initiation
 18 of conversations among Germany, Italy and Japan for
 19 strengthening the Axis, the significance of the deci-
 20 sion and the steps taken to implement it are dis-
 21 cussed in the summation.^a The successful conclusion
 22 of the negotiations and the character of the resultant

23 UU-78.

24 b. T. 35,985-6

25 c. UU-75-6, Supra

UU-79.

a. Summation F-143-6

Tripartite Pact are also noted in the summation.^b The
 1 summation likewise deals with the defense contention
 2 that the treaty was in fact an instrument of peace.^c

UU-80. We have seen that the Tri-Partite
 3 Pact which crowned SHIRATORI's work of many years
 4 was concluded approximately a month after SHIRATORI
 5 was appointed Advisor to the Foreign Minister in the
 6 2nd KONOYE Cabinet,^a a position which he accepted to
 7 exercise his influence on Japan's foreign policy.^b

8 MATSUMOTO, who returned to Tokyo in order to be made
 9 Chief of the Treaty Bureau of the Foreign Office at
 10 the very time of the Tri-Partite negotiations^c con-
 11 piled immediately after the conclusion of the Pact,
 12 an official record of the process of the drafting of
 13 various documents and their relation to each other.^d

14 In this official record he credited OHASHI, SHIRATORI
 15 and SAITO with the initial plan for the Tri-Partite
 16 negotiations^e which is in evidence.^f That the draft-
 17 ing of the plan did not exhaust SHIRATORI's part in
 18 the negotiations is shown by a further entry in this
 19 official record stating that Stahmer informed
 20
 21
 22

UU-79.

23 b. Summation F-147-9
 24 c. Summation F-150-1

UU-80.

a. Ex. 3595, T. 35,049;
 Ex. 3575, T. 34,949
 b. Ex. 538, T. 6265
 c. Ex. 3144, T. 27,983
 d. Ex. 3144, T. 27,984-5
 e. Ex. 3145A, T. 27,986
 f. Ex. 541, T. 6307-21

1 SHIRATORI of the German desire to sign the Pact in
 2 Berlin and that this problem was taken up by MATSUOKA
 3 at a conference between MATSUOKA, MATSUOKO, Ott, and
 4 Stahner on 4 September 1940.³ Two days after the
 5 conclusion of the Pact, on 29 September 1940, there
 6 appeared in the Tokyo Asahi Shinbun an authoritative
 7 explanation of the Pact by SHIRATORI.^h In due course
 8 SHIRATORI, the "Advisor of the Foreign Minister when
 9 the Tri-Partite Pact was concluded," and for a long
 10 time "the principal advocate of intimate cooperation
 11 with Germany,"ⁱ was awarded the Great Cross by
 12 Germany in recognition of his services relating to
 13 the conclusion of the Tri-Partite Pact.^j

14 UU-81. In the face of this evidence,
 15 SHIRATORI disclaims any connection with the negotia-
 16 tions for the Tri-Partite Pact^a and is supported by
 17 the witness, SAITO.^b In view of SHIRATORI's consist-
 18 ent endeavors for the conclusion of an alliance with
 19 Germany and Italy, this is, on its face, an astound-
 20 ing contention. According to SAITO, SHIRATORI's con-
 21 tribution to the Tri-Partite Pact was a minor trans-

22 UU-80.

23 g. Ex. 3145A, P. 27,987-9

24 h. Ex. 2234, Part VII (not read)

25 i. Ex. 1272, T. 11,354

j. Ex. 3538, T. 34,964; Ex. 3579, T. 34,893-4

UU-81. a. Ex. 3595, T. 35,048-9

b. Ex. 3589, T. 34,966-7

1 ^c
 2 lation job. This is reminiscent of SHIRATORI's
 3 earlier claim that he had nothing to do with the
 4 Japanese reply to the Lytton Report except to trans-
 5 late it. ^d It seems indeed a strange fate that re-
 6 duced SHIRATORI to the role of a mere off-stage
 7 translator at the very denouement of the plot in
 8 which he had previously played so prominent a part.
 9 SHIRATORI's and SAITO's contentions are supported
 10 only by their own ad hoc statements at this time
 11 while they are opposed by the contemporary report
 12 prepared by MATSUOKA who incorporated this report
 13 in his testimony before this Tribunal. ^e It may be
 14 noted that no reason is advanced by the defense as to
 15 why MATSUOKA would have deliberately falsified facts
 16 by stating that SHIRATORI, SAITO and OHASHI authored
 17 the plan if that were not the case.

18 UU-82. In view of the importance of the
 19 matter, it may be justified to analyze SAITO's testi-
 20 mony somewhat in detail. In direct testimony he
 21 stated that he saw SHIRATORI almost daily in the Ad-
 22 visor's quarters in the Foreign Office; ^a yet, in
 23 cross-examination, he volunteered the information

24 UU-31. c. Ex. 3583, T. 34,960; T. 34,983-5

25 d. UU-9, supra

e. Ex. 3144, T. 27,983-4

UU-82. a. Ex. 3595, T. 35,048-9

1 that SHIRATORI while Advisor to the Foreign Office
2 hardly went to the Foreign Office.^b That this con-
3 tradiction was not an inadvertent slip of the tongue
4 may be seen from the fact that each statement sup-
5 ported the point the witness was making at the time.
6 The evasive character of SAITO as a witness is
7 further demonstrated by his refusal to admit that
8 SHIRATORI was a strong advocate of alliance with the
9 Axis.^c How he could be unaware of that fact in view
10 of the stream of propaganda lectures and writings
11 that poured forth from SHIRATORI on the subject and
12 at the same time he in such close touch with SHIRA-
13 TORI's activities that he could state to the Tribunal
14 with cathedraic certainty that SHIRATORI never saw
15 a certain document; never had conversation with a
16 certain person, never gave advice on certain matters,
17 et cetera, is indeed a mystery. Again, SAITO's assur-
18 ances to the Tribunal that SHIRATORI "was by no means
19 an advocate of Japan's southward advance" is directly
20 contradicted by SHIRATORI's emphatic espousal of an
21 advance to the south in his public addresses.^d
22 SAITO's belief that SHIRATORI was not a Germanophile
23

24 UU-82.

25 b. T. 34,977

c. T. 34,978-9

d. Ex. 2234, I. 16,063

1 and that SHIRATORI thought it was no less objection-
 2 able to be pro-Axis than to be pro-Anglo-Saxon^e cer-
 3 tainly draws no support from the inflammatory speeches
 4 and writings of SHIRATORI that have already been
 5 cited. We have already noted that SAITO stated that
 6 the only connection SHIRATORI had with the Tri-
 7 Partite Pact was to translate into English the
 8 preamble of the treaty which SAITO had drafted into
 9 Japanese by Mr. MATSUOKA's order.^f When confronted
 10 with his earlier testimony -- significantly not in
 11 the SHIRATORI phase of this case -- that the English
 12 text of the preamble was written and proposed person-
 13 ally by Mr. MATSUOKA,^g he went into a long explana-
 14 tion stating in effect that there were three drafts
 15 of the preamble: MATSUOKA's original draft in Eng-
 16 lish, SAITO's translation of it into Japanese, and
 17 SHIRATORI's re-translation into English which be-
 18 came the final version.^h Yet, a comparison among
 19 MATSUOKA's draft as quoted in SAITO's earlier testi-
 20 mony,ⁱ the draft of the preamble as it appeared in
 21 MATSUMOTO's official record in its original form,
 22 Annex 4,^j and in its final form in the Tri-Partite Pact,^k

24 UU-82.

25 e. Ex. 3588, T. 34,963 f. Ex. 3588, T. 34,960
 g. Ex. 3143, pp 5, 6 (not read) and T. 27,968; 34,984
 i. Ex. 3143, pp 5, 6 (not read) h. T. 34,985
 j. Ex. 3145A, T. 27,997-8
 k. Ex. 3145A, Annex 20 (not read) and T. 28,016

1 shows that they are all one and the same. Thus, the
2 evidence destroys beyond a doubt SAITO's attempt to
3 explain away the conflict in his two statements and
4 with it his credibility as a witness.

5 VII. PERIOD AFTER TRI-PARTITE PACT.

6 A. SHIRATORI Tries to Unite People
7 Behind the Military Alliance.

8 UU-83. The conclusion of the Tri-Partite Pact
9 by no means brought abatement of SHIRATORI's activi-
10 ties as the conspiracy's propagandist for the glories
11 of German arms and the excellence of Japan's alliance
12 with the Axis. In November 1940, he rewrote an
13 article originally published in June 1939 in which he
14 cited German victories as proving the spirit of
15 totalitarianism and the final decline of liberalism
16 and democracy. He again pleaded for positive action
17 in concert with Germany and Italy to establish a new
18 world order. Once more he recounted the contributions
19 Japan had made to German attainments by keeping the
20 United States concerned with problems in the Pacific.
21 Disposition of the colonies of the Allies in the South
22 Seas was again a matter of concern to SHIRATORI be-
23 cause, as he said, "we, in establishing a New Order,
24 do not mean to confine its area only to China."^a
25

UU-83. a. Ex. 2234, p. 16,063

1 Thus, SHIRATORI continued his advocacy of the con-
2 spiratorial plan for southward expansion.

3 UU-84. SHIRATORI again served at the altar
4 of the alliance in December 1940 in an article en-
5 titled "The Three Power Pact and the World of To-
6 morrow." With great praise for the recently con-
7 cluded pact, SHIRATORI extolled the spirit of the
8 totalitarian States and painted in glowing colors the
9 reformation that a victory for the New Order would
10 bring into the world.

11 UU-85. In attempting to brush aside the
12 importance of his writings and harangues, SHIRATORI
13 again takes refuge in the familiar defense that they
14 were unofficial, personal interpretations and argu-
15 ments.^a We refer to our previous treatment of that
16 defense.^b His statement that he is not conscious of
17 ever having put forth any special effort to unite the
18 nation behind the Axis leaves room for considerable
19 wonder as to just what purpose SHIRATORI had in mind
20 in devoting himself so assiduously to speaking and
21 writing on the subject. If the Pact enjoyed the
22 unanimous acclamation he mentions, then we observe
23 that he is not without great credit for his part in
24

25 UU-84. a. Ex. 557, T. 6405

UU-35. a. T. 35,050

b. UU-18, supra

1 having so carefully nurtured public opinion to grow
2 in that direction. If, as SHIRATORI claims, the
3 Pact's enthusiastic reception obviated the need for
4 further salesmanship on its behalf there nonetheless
5 remained the need to prepare the Japanese people
6 for the program the conspirators were to carry out
7 by means of the Pact. It was to this end, we submit,
8 that SHIRATORI continued his diatribes against the
9 democracies, his specious justifications for treaty
10 violations, and his insistent demands that Japan
11 avail herself of the best opportunity in all history
12 to drive democratic nations from Asia.

UU-86. SHIRATORI's efforts in pressing for
1 military action against the democracies is reflected
2 in Ott's report on the general situation in Japan in
3 January 1941.^a Ott cited the demand for an attack on
4 Singapore made by activist circles under the leader-
5 ship of SHIRATORI and Admiral SUETSUGU and with the
6 support of the young officers' group and individual
7 high leaders of the Army and the Navy. The importance
8 of this demand will be seen from the fact that military
9 specialists of the German Embassy in Tokyo made a
10 special research study of such an attack on Singapore.
11 Also, in January, SHIRATORI and OHINA discussed with
12 Ott the advisability of German recognition of the Wang
13 Ching-wei government.^b The fact that they both found
14 understanding for their views from the Foreign Minister
15 indicates that SHIRATORI did, despite his denial, advise
16 with MATSUOKA on diplomatic matters. Later, in March
17 1941, SHIRATORI's participation as a war planner was
18 again mentioned by Ott, who quoted him as stressing the
19 need to tie up the British Fleet.^c Additional evidence
20 of SHIRATORI's close collaboration with the German
21 Embassy is seen in Ott's report of June 1941 of rumors
22

23 UU-86

- 24 a. Ex. 562, T. 6429-34
25 b. Ex. 3828, T. 37990
c. Ex. 576, T. 6476

received from SHIRATORI pertaining to an attack on the
1 Soviet Union.^d

2 UU-87. Though he had been incapacitated to a
3 degree by illness, SHIRATORI assured Ott in July 1941
4 that upon his recovery he would advocate an active course
5 for Japan and he told Ott that he regarded Japan's entry
6 into the war against Russia as the most important goal.^a
7 SHIRATORI has taken particular exception to this incrim-
8 inating item of evidence.^b He admits that Ott visited
9 him at his seaside cottage in July, but denies a
10 recollection of the conversation. He assures the
11 Tribunal, however, that the conversation "could never
12 have been such as his cable to Berlin would seem to
13 suggest." Ott, in his interrogatory, attempted to
14 minimize the importance of this event by describing his
15 visit on this occasion as a casual, informal one, which
16 he made on his way home one day. It is most significant
17 that the interrogator asked several questions designed
18 to establish the visit as a social meeting having no
19 official import, but he did not once ask Ott whether
20 his report of SHIRATORI's statements on that occasion was

22 UU-86

23 d. Ex. 800, T. 7968

24 UU-87

25 a. Ex. 1113, T. 10157

b. Ex. 3595, T. 35051-2

1 true and correct. Since it was in connection with
2 this particular telegram that SHIRATORI undertook a
3 general challenge of the Ott reports and in so doing
4 relied upon Ott's repudiation in his interrogatory,
5 it seems appropriate at this time to deal in some
6 detail with the Ott testimony.^c

7 B. Ott Fails to Explain away
8 SHIRATORI's Cooperation
9 With the German Embassy.

10 UU-88. In his ex parte statement in question
11 and answer form Ott very agreeably dismissed, repudiated,
12 denied or otherwise attempted to explain away a number
13 of his reports which had been used as prosecution
14 evidence and which were presented to him for comment
15 by the interrogator. Defense relies on this testimony
16 as complete refutation of that part of the prosecution
17 case linking SHIRATORI to the conspiracy by reason of
18 his collaboration with the German Embassy in the prepar-
19 ation, planning and waging of aggressive war. We take
20 the position that this testimony wholly fails as refuta-
21 tion because Ott's present recollections are not entitled
22 to the credibility merited by his reports made contempor-
23 aneously with the happenings related; because of incon-
24 sistencies and mis-statements within the interrogatory;

25 UU-87

c. Ex. 3579, T. 34849-904

1 and because of contradictions supplied by other evidence
2 which supports or confirms the original reports that Ott
3 now seeks to impeach. Examples in support of this
4 position are set forth below.

5 UU-89. In his circuitous effort to discredit
6 Exhibit 1113,^a but without denying the truth of his re-
7 port, Ott agreed that his visit to SHIRATORI in July
8 1941 was an incidental one and was not a special trip
9 in his official capacity.^b The fact of the matter, as
10 brought out in rebuttal, was that Ribbentrop was so
11 concerned about the health of Germany's good and valuable
12 friend, SHIRATORI, that he cabled Ott on 3 July 1941 to
13 determine and to telegraph a report on SHIRATORI's true
14 state of health.^c With respect to SHIRATORI's continued
15 efforts on behalf of an alliance after his return to
16 Italy in December 1939, it is notable that the interrog-
17 ator did not pose a direct question whether SHIRATORI
18 did or did not continue his work to create support in
19 Japanese circles for an alliance with Germany. Carefully
20 avoiding the direct issue, he asked whether SHIRATORI
21 took part in German-Japanese-Italian negotiations after
22 this return from Italy. Ott likewise skirted a commit-

23 UU-89

- 24 a. T. 10517-8
25 b. Ex. 3579, T. 34884
c. Ex. 3829, T. 37992

ment on the issue and answered merely that official negotiations were terminated upon the conclusion of the Russo-German Pact in August 1939 -- a fact never disputed before the Tribunal.^d In answer to the several statements made by Ott that he had no official relations with SHIRATORI and that he saw him only occasionally at social meetings or in a private capacity,^e we repeat our previous stand that conspiracy is conspiracy, whether it be conducted over canapes or over an office desk.^f The absurdity of this defense could not be better illustrated than it is in exhibit 3828^g which tells that SHIRATORI gave advice to Ott on an official matter at a "quite private farewell breakfast" that Ott gave for OSHIMA.

UU-90. Ott's comment^a on exhibit 2198^b does nothing more than confirm that ITAGAKI did in fact communicate directly with SHIRATORI and OSHIMA as reported, and rebuts ITAGAKI's denial that he did so.^c His comment^d on exhibit 498^e is valueless in view of SHIRATORI's admission that he went to Italy to conclude

UU-89

d. Ex. 3579, T. 34854;
 e. Ex. 3579, T. 34856, 34869,
 34874, 34879, 34886, 34891;
 f. UU-18 supra;
 g. T. 34990

UU-90

a. T. 34865
 b. T. 15744
 c. T. 30497
 d. T. 34866
 e. T. 6082,
 T. 6130

1 an alliance with the Axis and returned to Japan when
 2 his expectations suffered a temporary set-back.^f
 3 Ott's observation^g in connection with exhibit 511^h
 4 that SHIRATORI did not take any active part in further-
 5 ing German-Japanese relations, is completely at odds
 6 with his own reports at that time, as well as other
 7 evidence already discussed, particularly evidence of
 8 addresses and articles praising Germany and urging
 9 collaboration with her.ⁱ Attention is invited to the
 10 form of questioning employed^j with respect to exhibit
 11 516^k wherein Ott had reported SHIRATORI's cooperation
 12 with him. The interrogator did not ask whether Ott's
 13 report of cooperation was correct. He asked only whether
 14 they cooperated under any plan or agreement. Similarly,
 15 Ott evaded saying that he and SHIRATORI and OSFIMA had
 16 in fact worked together and said only that there was no
 17 agreement. This does not answer or discredit anything,
 18 for the prosecution does not contend that there was any
 19 signed and sealed formal instrument of agreement.

20 UU-91. Ott's attempt to repudiate^a exhibit
 21 548^b has been discussed above.^c The careful phrasing

UU-90UU-91

23 f. UU-35-6, supra
 24 g. T. 34871
 25 h. T. 6141
 i. UU-66, 67, 69, 71,
 72, 74, supra
 j. T. 34872-4
 k. T. 6152

a. T. 34877-8
 o. T. 6296
 c. UU-75-6, supra

1 of the questions^d regarding exhibit 562^e is again
2 significant. The interrogator did not ask concerning
3 the accuracy of Ott's report of demands by activist
4 circles under SHIRATORI that Japan attack Singapore,
5 instead he asked only whether the conversations on
6 which Ott based his report were official talks. Ott's
7 statement that he was not afforded proof that SHIRATORI
8 was a leader in such circles is likewise valueless for
9 it is not a denial, that SHIRATORI did in fact exert
10 leadership in such a group. In answer to Ott's denial
11 that SHIRATORI ever furnished news or information to
12 the German Embassy,^f we refer to the many telegrams
13 already discussed, in which Ott cited SHIRATORI as his
14 informant or advisor.

15 UU-92. Finally, attention is invited to the
16 inconsistent position Ott has taken with respect to
17 the importance of SHIRATORI in the Japanese political
18 scene. Four times in the course of his statement^a
19 Ott explained that he mentioned SHIRATORI's cooperation
20 in order to lend weight to his opinions in Ribbentrop's
21 mind and in order to convince Ribbentrop that he, Ott,
22 had contacts in influential Japanese circles. (This,
23 of course, is no denial of the fact of cooperation.)
24

25 UU-91

i. T. 34878-9
e. T. 6429
f. T. 34898

UU-92

a. T. 34863, 34873,
34874, 34901-2

1 On the other hand, Ott attempted elsewhere in his
2 statement^b to minimize the importance of SHIRATORI
3 in affairs of State, and even concluded^c that SHIRATORI
4 had not merited the Great Cross which Germany had
5 bestowed on him after conclusion of the Tri-Partite
6 Pact for his service in promoting German-Japanese
7 accord.^d We submit that Ott's contemporaneous estimate
8 of SHIRATORI's influence in political affairs is
9 deserving of far greater credence than this latter-
10 day change of heart on the subject.

11 C. SHIRATORI's Illness No Bar
12 to Continued Agitation For
13 Aggressive Action.

14 UU-93. The defense has presented evidence
15 tending to show that SHIRATORI was hospitalized from
16 mid-April to mid-May 1941 and that he was not completely
17 recovered from his illness until after the close of the
18 year.^a No proof was adduced showing that his illness
19 was in any way responsible for any particular act which
20 we rely upon as being an instance of conspiratorial
21 action. In the absence of such a showing it is
22 inconsequential whether SHIRATORI enjoyed perfect

23 UU-92

- 24 b. T. 34899-900
25 c. T. 34893
d. Ex. 1272, T. 11351

UU-93

- a. Ex. 3592, T. 35004

1 health or not the day before, the day after, or even on
2 the day he contributed in some manner or means to the
3 conspiracy. That SHIRATORI continued to advise with
4 the German Embassy despite his illness has already been
5 shown in exhibit 800^b and exhibit 1113^c.

6 UU-94. His continued cooperation is again
7 evident from a report of a conversation in December 1941
8 in which SHIRATORI explained to Ott that leading circles
9 in Japan had become convinced that the United States
10 wanted to enter the war.^a This evidence not only
11 shows SHIRATORI's contact with Ott, but also the fact
12 that he was keeping in touch with Japanese leaders on
13 political matters. Once more, attention is invited to
14 the fact that when the interrogator questioned Ott on
15 this exhibit he avoided, for reasons we can only surmise,
16 direct inquiry as to the accuracy of Ott's reporting
17 and contented himself with suggestion to Ott that the
18 conversation took place in a villa by the sea.

19 D. SHIRATORI's Efforts Climaxed
20 at Pearl Harbor. He proclaims
21 World Domination the Aim of
22 the Conspiracy.

23 UU-95. Pearl Harbor brought to SHIRATORI the
24 fulfillment of his long-cherished and oft-proclaimed

25 UU-93

b. UU-86, Supra
c. UU-87, Supra

UU-94

a. Ex. 608, T. 6664

1 desire for action designed to strip the democratic
2 "have" nations of their vested rights and to drive them
3 out of Asia. Though limited to comparative inactivity
4 by illness in the months preceding Pearl Harbor,
5 SHIRATORI could still enjoy his full measure of credit
6 for the deeds of that day. As was true of the Tri-Partite
7 Pact, Pearl Harbor, with its catastrophic consequences,
8 was not conceived in a day or in a month or in a year,
9 but had been germinating since the start of the conspir-
10 acy to impress on all peoples a New World Order of
11 Nazi-Japanese design. Though SHIRATORI fired no shot
12 and released no bomb in the war of his choice, his hand
13 is nonetheless evident in the blueprint of that war.
14 We have already seen his early and continued espousal
15 of totalitarian forms and actions. In October 1937, he
16 proclaimed the new age of Nazism in the West and rebuked
17 his countrymen for their failure to accept completely
18 the new philosophy.^a Moving closer to the conspiracy's
19 ultimate aim, in March 1939, he tried to justify con-
20 tinued outlawry by ridiculing the democratic idea that
21 a treaty should be considered sacred and inviolable.^b
22 In March 1941 he wrote an article to prepare the people
23 for entry into the European war as an obligation under
24

25 UW-95.

a. Ex. 3596-B, T. 35134-5

b. Ex. 3596-A, T. 35133-4

1 the Tripartite Pact. Such a war, he said, could be
2 viewed as an expansion of the China Affair.^c With
3 that we agree.. The Pacific war did spring from the
4 China Affair, just as the China Affair grew out of
5 the Manchurian Incident in accordance with the conspir-
6 atorial pattern. Seeing America as an obstacle,
7 SHIRATORI had worked with the German Embassy, as Ott
8 reported in June 1940, to convince political leaders of
9 the inevitability of war with America.^d Now, the people
10 had to be rallied behind that viewpoint. So, in April
11 1941, he attempted to convince them of the necessity
12 of war against America if she did not "permit the New
13 Orders of Asia and Europe to take their own courses."^e
14 To make the horrors of that war more palatable, he
15 stated: "Destruction of human lives and materials
16 is unavoidable. This is neither the destruction of
17 civilization nor the collapse of culture. This is
18 nothing but a sacrifice for the sake of the birth of
19 a new culture."^f At the same time, April 1941, he
20 concentrated all his past agitation for a showdown
21 with the democracies by republishing his old speeches
22 and articles in a single volume under the significant

23 UU-95 c. Ex. 3597-A, T. 35127-8

24 d. UU-70, Supra

25 e. Ex. 3598, P. 2 (Not read)

f. Ex. 3598. T. 35130-1

1 title "The Age of War."^g

2 UU-96. SHIRATORI held to the conspiratorial
3 line during the war by serving on the Board of Directors
4 of the Imperial Rule Assistance Political Society,^a
5 by accepting election as a "recommended" member of the
6 Diet in the Government-controlled election in April
7 1942^b and by continuing his efforts to shape public
8 opinion.^c A literal believer in "the eight corners
9 of the world under one roof," SHIRATORI talked not in
10 terms of a half-world shared with the Axis, but of the
11 whole world under Japanese domination. In June 1942,
12 he told the people that German and Italian totalitarian
13 ideals did not provide the foundation for a Japanese
14 world,^d and that "the basic principle of Imperial Rule
15 is that it be extended over the earth."^e Hence the time
16 would come when the only hope of foreign countries would
17 be "to respectfully request the sovereignty of His
18 Majesty, the Emperor, the Incarnation of God."^f

19 VIII. THE CONCLUSION

20 UU-97. In closing this summation we submit
21 that the evidence adduced in this case leads to the
22 inescapable conclusion that SHIRATORI joined the
23

24	<u>UU-95</u>	g. T. 35099	<u>UU-96</u>	c. Ex. 2233-A.T.16012-26
25	<u>UU-96</u>	a. Ex. 3575, T. 34949		d. Ex. 2233, T.16017
		b. Ex. 3575, T. 34949		e. Ex. 2233, T.16023
				f. Ex. 2233, T.16024

1 conspiracy at an early date as propagandist and
2 apologist for the establishment of a New World Order
3 by means of force and aggression. Not only did he
4 continue his attempts to influence public opinion
5 throughout the life of the conspiracy, but he worked
6 actively, both in and out of public office, to influ-
7 ence successive governments to take the steps necessary
8 to effectuate the aims of the conspiracy. This evidence,
9 we contend, has withstood attack and establishes beyond
10 a reasonable doubt that SHIRATORI is guilty of the
11 crimes with which he is charged in the Indictment. The
12 relation of the evidence to the particular counts in
13 the Indictment is set forth in the attached annex.
14 SHIRATORI pronounced a verdict upon himself and his
15 co-conspirators when he said that they must plead guilty
16 if they were obliged to explain and justify Japan's
17 expansionist action in the light of the Western view
18 of things or within the scope of law and treaties.^a
19 It is our respectful submission that the Tribunal cannot
20 do better than to accept this verdict as its own.
21

22 - - -

A N N E X

1 Counts 1 to 5 - the conspiracy counts are
2 sustained by all the evidence. Paragraphs UU-20 to
3 97 relate particularly to Count 5.

4 Counts 6 - 17 - planning and preparing for
5 aggressive war - are likewise supported by all the
6 evidence. Paragraphs UU-5 to 16, 20-1, and 28 relate
7 to Count 6 (China); 20-97 relate particularly to
8 Counts 7 and 8 (Great Britain and the United States);
9 13-17, 20-22, 27, 87 are especially pertinent to
10 Count 17 (U.S.S.R.)

11 Counts 27 to 32 and 34 - waging wars of aggress-
12 ion - all the evidence links SHIRATORI as an accomplice
13 and accessory. Pertinent to Counts 27 and 28 are
14 paragraphs UU-5 to 16; 20-1, and 28; Counts 29-32 and
15 34, - 20-97.

16 THE PRESIDENT: We will adjourn until half-past
17 one.

18 (Whereupon, at 1200, a recess
19 was taken.)
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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

BRIGADIER NOLAN: If it please the Tribunal,
the case against SUZUKI, Teiichi.

VV-1. The purpose of this summary is to present
to the Tribunal an analysis of the main points in the
evidence adduced both by the prosecution and by the
defense relating to the defendant SUZUKI.

VV-2. For the sake of convenience this evi-
dence has been arranged under separate headings, and,
as far as was possible, the chronology of events has
been followed.

VV-3. The contentions of the prosecution
based on the evidence are set out in appropriate places
in the Summary and special mention is made of evidence,
adduced by the defense, which the prosecution seeks to
distinguish.

VV-4. The defendant SUZUKI is charged under
Counts 1-17, 19-22, 25-32, 34-47 and 51-55 of the
Indictment, all numbers being inclusive.

1. MILITARY AFFAIRS BUREAU

VV-5. In his affidavit SUZUKI states that his
(VV-5. a. T. 35177-8)

1 frequent contacts with China and the Chinese made him
2 sympathetic with the Chinese Nationalistic movement
3 and that after an interview with Chiang Kai-shek in
4 1927 his sympathy for that movement was all the more
5 intensified. His experiences cultivated his conviction
6 that the aspirations of the Chinese people for
7 the recovery of China's national rights would be
8 realized in due course of time and that Japan should
9 assist and cooperate with the New China represented
10 by the Nationalist Party and that he is glad to know
11 that one of his Chinese friends Hu Lin understands
12 him thoroughly.

13 VV-6. The witness Hu Lin, a newspaper editor
14 in Shanghai states ^{a.} that in 1927 SUZUKI sympathized
15 with the Kuomintang and advocated that Japan should
16 help bring forth cooperation between the Generalissimo
17 and Marshal Chang Hsueh-liang. In 1935 Sino-Japanese
18 relationship was getting worse and SUZUKI still advo-
19 cated Sino-Japanese cooperation. ^{b.}

20
21 VV-7. On cross-examination SUZUKI told the
22 Tribunal ^{a.} that in 1932 and 1933 he was attached to the
23 Bureau of Military Affairs. His duties pertained to
24 liaison matters in military affairs concerning China

25 (VV-6. a. Ex. 3606
b. T. 35183)
(VV-7. a. T. 35255)

and enabled him to study the Manchurian problem and
1 the China Incident and in 1932 he went to Shanghai
2 to investigate the Manchurian Incident and conditions
3 in China proper. ^{b.} He was again in China after the
4 Tang-ku truce was signed.

5 VV-8. On redirect examination SUZUKI told
6 ^{a.} his counsel that while in China he had a conversation
7 with Kwang Fu who was on intimate terms with Chiang
8 Kai-shek and Chairman of the Political Council in
9 Peking. Kwang Fu said that there were three points
10 around which Japan and China should make efforts for
11 the restoration of relations.
12

13 (1) Not to take up the Manchurian problem
14 until both sides had cooled off.

15 (2) Japan should not seek a special economic
16 status in China proper but should engage in economic
17 activities on equal terms with the powers.

18 (3) The common aim of Sino-Japanese relations
19 should be anti-communism.
20

21 VV-9. SUZUKI approved of these suggestions
22 ^{a.} and expressed his opinion to his superiors that set-
23 tlement of the various local issues in North China
24 should be undertaken by relying upon and trusting the

25 (VV-7. b. T. 35256)
(VV-8. a. T. 35338)
(VV-9. a. T. 35338)

1 various North China organs of the Chinese and in coop-
2 eration with the Chinese.

3 VV-10. Not all of his opinions were adopted.^{a.}
4 As a result of the Manchurian Incident there was in the
5 army a feeling of contempt for the Kuomintang and being
6 only a lieutenant colonel his views did not carry much
7 weight.

8 VV-11. On cross-examination he was shown a
9 document^{a.} which had been received by MORISHIMA, the
10 Section Chief of the Asiatic Affairs Bureau of the
11 Foreign Office, on 12 July 1933. A written memo on
12 the document stated that it had been received from
13 Lieutenant Colonel SUZUKI with a note that as the War
14 Ministry and the Army General Staff had unanimously
15 agreed on the gist of the policy set forth in the docu-
16 ment, it was desired that the government would decide
17 its policies along those lines. The policy set out
18 in the document stated in part:

19 "We must make the North China Regime suppress
20 the National Party's Anti-Japanese activities
21 in North China and make the party gradually
22 reduce itself until its final dissolution . . .

23 We should proclaim to the world that the Im-
24 perial Government as well as its people shall
25

(VV-10. a. T. 35340)

(VV-11. a. Ex. 3607-A, T. 35262)

1 be hostile to the Nanking Government as long
2 as it does not alter its past attitude towards
3 Japan." ^{b.}

4 VV-12. SUZUKI went on to say ^{a.} that the policy
5 did not express his own views and that it was his own
6 private opinion that he gave to Hu Lin in the course
7 of a private conversation.

8 VV-13. It is submitted that SUZUKI deceived
9 Hu Lin as to the real policy of the War Ministry and
10 the Army General Staff whose avowed object was the
11 final dissolution of the National Party and hostility
12 towards the Nanking Government. If this contention is
13 supported by the evidence, and the prosecution contends
14 that it is, it renders the testimony of Hu Lin worthless
15 when he said that SUZUKI was advocating Sino-Japanese
16 cooperation. SUZUKI knew what the real policy was and
17 was lending his efforts towards its implementation, and,
18 it is submitted that the evidence establishes that
19 SUZUKI's alleged sympathy with the Chinese Nationalistic
20 movement was a sham and not in accordance with the true
21 facts. He has been shown by the evidence to be a person
22 unsympathetic with that movement and his subsequent
23 activities are consistent with that view.

24 (VV-11. b. T. 35263)

25 (VV-12. a. T. 35264-5)

VV-14. As to his attitude towards Russia it
1 is to be observed that KIDO records in his diary ^{a.} that
2 on 18 April 1933 in a conversation at the residence
3 of Marquis INOUE, SUZUKI said that there were two
4 kinds of enemy, an absolute enemy and a relative enemy.
5 As Russia aimed to destroy the national structure of
6 Japan, he pointed out Russia as an absolute enemy.
7 In his affidavit, referring to this conversation, SUZUKI
8 states ^{b.} as long as Russia aided and abetted the activi-
9 ties of the 3d International which plotted to effect a
10 Communist revolution in Japan abolishing the Emperor
11 system, Russia was an absolute enemy of Japan.
12

VV-15. To further show his attitude towards
13 Russia during this period, the prosecution adduced evi-
14 dence ^{a.} through the witness TAKEBE, former Chief of the
15 General Affairs Department of the Manchurian Government,
16 that at a meeting in Toyama Military School in Tokyo
17 in 1933 after ARAKI had spoken, SUZUKI, using a map of
18 Manchuria, China and the Soviet Union, made a statement
19 which consisted in laying the ground for the necessity
20 for a war of Japan against the Soviet Union and for
21 the necessity of capturing the Soviet Maritime Province,
22 Zabaikalye and Siberia.
23
24

25 (VV-14. a. Ex. 2253, T. 16216
b. T. 35231)
(VV-15. a. Ex. 3371, T. 31835)

1 VV-16. In his own evidence ^{a.} SUZUKI says that
2 he remembers explaining maps of Manchuria but denies
3 making any speech connoting the necessity of military
4 occupation of Siberia. The witness KOSAKA supports this
5 statement. ^{b.}

6 VV-17. The prosecution contends that as early
7 as 1933 SUZUKI was, in fact, advocating the expansion
8 of Japan by means of aggressive war and again is at-
9 tempting to conceal his real attitude to serve his
10 present purpose.

11 2. CHINA AFFAIRS BOARD

12 VV-18. In his affidavit SUZUKI states ^{a.} that
13 the China Incident commenced during his stay in Tongning
14 and that he "deeply deplored" such developments. Many
15 features of the policy relative to the China Incident
16 decided by the High Command and government were diametri-
17 cally opposed to his fundamental ideas on China.

18 VV-19. When he was appointed Chief of the
19 Political Section of the China Affairs Board, on 16
20 December 1938, he had to execute the duties assigned
21 to him within the framework of such a policy. ^{a.} He
22 set about his task with the following principles as
23 his personal guide:

24 (VV-16. a. T. 35232 (VV-19. a. T. 35194)
25 b. T. 36985)
(VV-18. a. T. 35193)

1 (1) Cooperation between the Chinese and
2 Japanese on terms of equality.

3 (2) The security of the Chinese in war
4 stricken areas.

5 (3) Respect for the rights and interests
6 of the Powers in China.

7 VV-20. He further states ^{a.} that the establish-
8 ment of new regimes in China was incompatible with his
9 basic ideas regarding Chinese affairs but it had been
10 a fixed policy over which he had no control.

11 VV-21. On cross-examination it was established ^{a.}
12 that the China Affairs Board was organized in December
13 1938 and that he was the first Chief of the Political
14 Section. He admitted that he was one of the organizers
15 of the Board of which the Prime Minister was President
16 and other cabinet ministers were vice presidents. The
17 principal offices of the Board were in Peiping and
18 Shanghai and there were other offices in Kalgan in
19 Inner Mongolia and in Amoy.

20 VV-22. He went on to say ^{a.} that the Board
21 handled business affairs in China in relation to indus-
22 try, transportation and economic problems and the con-
23 trol of the Board was effected through the North China
24

25 (VV-20. a. T. 35195)
(VV-21. a. T. 35266)
(VV-22. a. T. 35267)

Development Company and the Central China Development
1 Company. The Board also gave advice at times to Pro-
2 visional Governments in China.

3 VV-23. When asked on cross-examination what^{a.}
4 features of the policy relative to the China Incident
5 and decided by the High Command and Government were
6 diametrically opposed to his fundamental ideas on
7 China, he replied that the features of the policy were
8 the decisions of January 1938 and October 1938.

9 VV-24. These decisions were^{a.} that Japan
10 hoped for the establishment of a new government in
11 China and in cooperation with that government Japan
12 would work for the stability of East Asia and for Sino-
13 Japanese cooperation.
14

15 VV-25. SUZUKI felt that though the army talked
16 of establishing a new regime in China, such a regime
17 would naturally be established under the authority and
18 influence of the Japanese Army and it would be diffi-
19 cult to hope for a spontaneous expression of will, on
20 the part of the Chinese people to establish a government
21 of their own.

22 VV-26. He also felt^{a.} that it was wrong for
23 Japan to possess an economic system in China based on
24

25 (VV-23. a. T. 35270)
(VV-24. a. T. 35271)
(VV-26. a. T. 35272)

1 Japanese laws. He was making every effort^{b.} to advance
2 along the lines that would make Japan's interference
3 in the political affairs of China as small as possible.

4 VV-27. At this point the cross-examination
5 was directed to what in fact was done by the China
6 Affairs Board to minimize such interference of Japan
7 after his appointment as Chief of the Political Sec-
8 tion.

9 VV-28. In March 1939 liaison offices were
10 set up in China. SUZUKI states^{a.} that prior to their
11 establishment the army had special service agencies
12 all over China and the opinion was advanced that it
13 was not good that the army solve all problems according
14 to its own viewpoint, and that the viewpoint of all
15 administrative government offices be also taken into
16 consideration in dealing with such problems.

17 VV-29. On further cross-examination^{a.} SUZUKI
18 stated that in June 1939 the China Affairs Board did
19 not concern itself with such matters as the appropria-
20 tion of moneys for the Wu project. He did not know
21 that the moneys for that project were to be paid out
22 of the surplus Maritime's Custom Revenue or that the
23 funds were to be drawn in the name of a Japanese to
24 maintain secrecy.
25

(VV-26. b. T. 35276) (VV-29. a. T. 35279)
(VV-28. a. T. 35277)

1 VV-30. When confronted with a document^{a.} from
2 the files of the Foreign Minister it became clear that
3 correspondence dated 29 June 1939 had passed between
4 SUZUKI and the Chief of the Bureau of East Asiatic
5 Affairs of the Foreign Ministry concerning the nomina-
6 tion of a Japanese to be responsible for the expenses
7 of the Wu project in accordance with a decision made
8 at a meeting of the China Affairs Board. SUZUKI then
9 admitted that he thought^{b.} that there had been expenses
10 for the Wu project in accordance with such a decision.

11 VV-31. He went on to say that he did not know
12 the purpose for which the funds were to be drawn or
13 whether they were to be drawn secretly; he merely
14 conveyed to the Foreign Minister and the Foreign Office
15 and the China Affairs Board branch offices in the China
16 area, the communications which had been sent to him
17 from the War Ministry.

18 VV-32. He did know that the Maritime Customs
19 revenue was customs duty levied on imports into China
20 and that the various branch agencies of the army were
21 carrying on the Wu project at the time and may have
22 utilized the revenue of the Maritime Customs for their
23 expenditure.^{a.}

24
25 (VV-30. a. Ex. 3608-A, T. 35281
 b. T. 35283)
(VV-32. a. T. 35285)

1 VV-33. He admitted^{a.} that the problems of
2 creating new governments in China were matters which
3 he has every reason to remember compared with others
4 and that it was the most important problem of the
5 Board.

6 VV-34. When the China Affairs Board was
7 asked to give a letter to KAGESA (who was going to
8 see Wang) in order to show that the Board was not
9 opposed to Wang's peace moves, SUZUKI wrote the let-
10 ter.^{a.} He also admitted that in February 1940 the
11 China Affairs Board recommended advisers for the New
12 Central Government and thinks that in that same month
13 40 million yuan was authorized to be loaned to that
14 government.^{b.}

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24 (VV-33. .. T. 35286)
25 (VV-34. a. T. 35288
b. T. 35291)

1 VV-35. As further evidence of SUZUKI's at-
2 titude towards China the prosecution witness Goette
3 stated^{e.} that on 27 September 1939 he had a conversa-
4 tion with SUZUKI in Tokyo in which Goette raised the
5 question of the Chinese with whom the Japanese army
6 were working and SUZUKI said that they admitted that
7 they could not get General Chiang Kai-shek to their
8 side, therefore, the war against China would go on.

9 VV-36. In his affidavit^{e.} SUZUKI states
10 that he told a newspaper man whose name he does not
11 remember that the policy of the government to deal
12 with Wang was illusory for Chiang Kai-shek was the only
13 real ruler in China.

14 VV-37. It may be mentioned here that it was
15 during his service with the China Affairs Board that
16 he states^{a.} that he voiced his opposition to the pro-
17 posed Triple Alliance (27 September 1940) because the
18 Nazi conception of dictatorial and totalitarian govern-
19 ment was not in harmony with his political views and
20 for the added reason that Germany was then at war
21 with Great Britain, with which latter country Japan
22 must keep on friendly terms.
23

24 (VV-35. a. T. 3780.)

25 (VV-36. a. T. 35234)

(VV-37. a. T. 35190)

1 VV-38. The activities of the China Affairs
2 Board and of SUZUKI during his period of office have
3 been gone into with some particularity to prove the
4 fact that this powerful Board, with SUZUKI as one
5 of its important heads, was thwarting "a spontaneous
6 expression of will" on the part of the Chinese people
7 to establish a government of their own. So far from
8 making an effort to minimize the interference of Japan
9 in the political affairs of China, the establishment
10 of new regimes in China was financed and encouraged.

11 VV-39. It is submitted that, by reason of
12 his office and the importance of the matters engaging
13 the activities of the China Affairs Board, SUZUKI had
14 full knowledge of what was being done and his alleged
15 efforts to minimize interference and to bring about
16 cooperation between China and Japan on terms of
17 equality are unsupported by the evidence. The prosecu-
18 tion contends that SUZUKI was in favor of aggressive
19 warfare in China and was active in the exploitation
20 of that country and its resources.

21
22 3. THE PLANNING BOARD

23 VV-40. As SUZUKI states in his affidavit^{ε.}
24 his studies in financial and economic matters in the
25 Finance Ministry in 1929 aroused in him a lively
(VV-40. e. R. 35175)

1 interest in problems of national economy.

2 VV-41. This interest in economic matters will
3 be shown by the evidence to have influenced his whole
4 career and eventually led to his appointment as
5 President of the Planning Board in April 1941.

6 VV-42. The Ordinance for the organization
7 of the Planning Board provides ^{a.} in Article I that
8 the Board shall have charge of

9 (1) Drafting of plans concerning the expan-
10 sion and employment of the total national resources
11 in times of peace and war and reporting of such plans,
12 together with reasons therefor, to the Prime Minister.

13 The ordinance further provides (Article 1,
14 paragraph 4) that the Board shall adjust and coordinate
15 affairs of the various government offices with regard
16 to the making and execution of a national mobilization
17 plan.

18 VV-43. It is probably quite true as SUZUKI
19 ^{a.} states in his affidavit and the plans were not pre-
20 pared by the Planning Board in an autonomous way and
21 that the execution of such plans was not the responsi-
22 bility of the Planning Board. Nevertheless, the
23 President of the Planning Board, as SUZUKI states ^{b.}

24 (VV-42. a. Ex. 71, R. 684)

25 (VV-43. a. R. 35240
b. R. 35293)

1 on cross-examination, had power to advise the Prime
2 Minister and Cabinet on matters of national policy
3 other than those concerning military affairs and
4 foreign affairs and on matters which would affect
5 trade and the national resources of Japan which, it is
6 submitted, would include the negotiations with the
7 United States in the month immediately preceding the
8 outbreak of the war.

9 VV-44. In his evidence ^{a.} the prosecution
10 witness Liebert stated that the President of the
11 Planning Board, together with the Presidents of
12 control associations controlled Japanese economy.

13 This is denied ^{b.} by SUZUKI who states that the organ-
14 ization and operations of control associations were in
15 charge of the Ministries concerned and not of the
16 Planning Board. It is submitted that SUZUKI himself
17 removes any doubt which might exist as to the importance
18 of his office when he states ^{c.} that he was instructed
19 by the Prime Minister to concentrate his energy on
20 the work of "economic mobilization". It could only
21 have been mobilization for war as he himself well
22 knew.

23 VV-45. In his affidavit SUZUKI states ^{a.}

24 (VV-44. a. T. 8403
25 b. T. 35241
c. T. 35309)
(VV-45. a. T. 35196)

1 that he was asked by KONOYE to assume the post of
2 President of the Planning Board, and, while he was
3 reluctant to accept, KONOYE told him that his refusal
4 would have placed KONOYE in an awkward predicament
5 because a condition of OGURA's acceptance of a Cabinet
6 post was the nomination of a new President of the
7 Planning Board.^{b.}

8 VV-46. At the same time, 4 April 1941, he
9 was appointed Minister without Portfolio which enabled
10 him to attend Cabinet meetings. He understood^{e.} that
11 his primary function lay in the execution of the bus-
12 iness of the Planning Board. On cross-examination^{b.}
13 he stated that he did not suggest that because his
14 primary function lay in the execution of the business
15 of the Planning Board that he could escape the respon-
16 sibility attaching to a Minister of State.

17^{a.}
18 VV-47. In his affidavit^{a.} he states that he
19 understood he was especially chosen, not blindly to
20 comply with the exorbitant demands then made by the
21 Army and Navy but to see that the allocation of vital
22 commodities be made in such a way as not to exhaust
23 the very sources of the nation's economic power through
24 over concentration on the production of munitions and

25 (VV-45. b. T. 35292)

(VV-46. a. T. 35196

b. T. 35292)

(VV-47. a. T. 35197)

to secure the cultural life as much as possible.

1 VV-48. His first task was drawing up the
2 Commodity Mobilization Plan or Plan for the Allocation
3 of Vital Materials for the fiscal year 1941.^{a.} SUZUKI
4 states in his affidavit^{b.} that the Commodity Mobiliza-
5 tion Plan sanctioned by the Cabinet on 22 August 1941
6 was formulated so as to ensure self-supply and self-
7 sufficiency as much as possible in respect of vital
8 commodities, with a view to guaranteeing the security
9 of national livelihood as well as to preserve the
10 people's sense of security with regard to national
11 defense.
12

13 VV-49. It is the contention of the prosecu-
14 tion that this Plan (like others which will be referred
15 to later) was a war plan. On cross-examination,
16 SUZUKI stated^{c.} that one could not say it was a war
17 plan. Great stress was laid on the prompt expansion
18 of armaments but that was not all. When shown a state-
19 ment made to the press^{b.} concerning the plan he admitted
20 he may have made the statement in which it was announced
21 that the Government has examined and studied various
22 measures necessary for the completion of the war-time
23

24 (VV-48. a. T. 35196

b. T. 35199)

25 (VV-49. a. T. 35296

b. T. 35296, Ex. 1132)

1 system in response to the international situation
2 which had undergone a sudden change and that the
3 enforcement of the scheme depended upon a strong war
4 sense and the cooperation of officials and the people. ^{c.}

5 VV-50. In answer to his own counsel on
6 redirect examination SUZUKI said, ^{c.} that in formulating
7 the 1941 Mobilization Plan, national defense, generally
8 speaking, was considered but nothing specific, such as
9 any possible conflict with the United States or Great
10 Britain was ever considered.

11 VV-51. From the end of June 1941 SUZUKI
12 states ^{a.} that he was confronted with two events of
13 major importance. In the first place the German-
14 Soviet war made it impossible for Japan to obtain
15 special steel, machine tools and other items. Secondly,
16 the dispatch of troops to South French Indo-China
17 brought in its wake the economic blockade of Japan by
18 the United States, Great Britain and other countries,
19 cutting off Japan's anticipated supply of scrap iron,
20 petroleum, fertilizers and other vital commodities.

21 ^{a.}
22 VV-52. When asked on cross-examination
23 whether the special steel machine tools and scrap iron

24 (VV-49. c. Ex. 1132, T. 10204)
25 (VV-50. a. T. 35341)
(VV-51. a. T. 35198)
(VV-52. a. T. 35294)

1 were to be used in the manufacture of munitions of
2 wa. SUZUKI replied in the affirmative.

3 VV-53. With regard to the dispatch of troops
4 into South French Indo-China SUZUKI does not remember^{a.}
5 attending the Imperial Conference of 2 July 1941, but
6 heard from KONOYE that they might be dispatched. He
7 voiced the view^{b.} that it would be a serious matter
8 if Japan were subjected to an economic embargo. The
9 Prime Minister said that the step was imperative to
10 ward off an immediate danger of a war with the Soviet
11 Union.

12 VV-54. On cross-examination SUZUKI stated^{a.}
13 he himself did not think that the move would ward off
14 the immediate danger of a war with the Soviet Union.
15 He objected to the move because he felt^{b.} in view of
16 the negotiations with America and in view of the domestic
17 situation it was unwise to deploy Japan's forces over
18 a wide area. Whether his objection be based on
19 economic or military grounds it is to be observed that
20 SUZUKI was one of the Cabinet Ministers who decided
21 to dispatch the troops^{c.} and his views were not such
22 as to cause him to relinquish his office.
23

24 (VV-53. a. T. 35198
b. T. 35199)
25 (VV-54. a. T. 35295
b. T. 35294
c. T. 35295)

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1 VV-55. In July 1941 a plan was created for
2 French Indo-China and the exploitation of its natural
3 resources. SUZUKI stated in his cross-examination^{a.}
4 that he understood that a Stationary Economic Investi-
5 gation organ was to be established in the Japanese
6 Consulates at Hanoi and Saigon.

7 VV-56. In 1941 the opinion^{a.} was, he states,
8 brought to the fore in Japan that as long as the United
9 States refused to sell Japan-needed commodities Japan
10 was compelled to take by force of arms the areas con-
11 taining such resources. When asked on cross-examination
12 if he considered such a refusal a justification for
13 aggressive war, SUZUKI replied^{b.} that under any circum-
14 stances aggressive war was wrong.

15 VV-57. In August 1941, he was ordered by the
16 Prime Minister to study three problems^{a.} which it is
17 submitted are indicative of the importance of the work
18 of the Planning Board.

19 (a) Can Japan provide herself with needed
20 materials without relying upon America or Britain?
21 SUZUKI's answer was no.

22 (b) Supposing that the severance of economic
23 relations was to continue, would Japan be able to stand
24

25 (VV-55. a. T. 35,301.
VV-56. a. T. 35,200.
b. T. 35,300.
VV-57. a. T. 35,200.)

1 it for the duration? His answer was that so long as
2 no further special development occurred in Japanese-
3 American relations, Japan could rely upon her stockpiles,
4 excepting petroleum and a few other things, so that
5 Japan might escape a collapse for a year and a half or
6 possibly two years.

7 (c) Supposing that war broke out and Japan
8 succeeded in taking the oil-producing areas of the
9 Netherlands East Indies, would Japan then be able to
10 obtain the needed petroleum. He reported that immediate
11 acquisition of the petroleum would be impossible because
12 military occupation would necessarily be attended with
13 serious destruction.

14 VV-58. In order to further show that war was
15 being planned and prepared SUZUKI was cross-examined
16 regarding oil well equipment. He says he first heard
17 of the army and navy dismantling oil well equipment to
18 be taken south in the middle of August 1941. He thinks
19 that this was done with the thought that there might
20 possibly be a war and with the further thought that it
21 might be very useful to exploit the oil fields of the
22 areas to be occupied.^{a.}

24 VV-59. The attention of the Tribunal is also
25 drawn to the fact that SUZUKI took over and revised
(VV-58. a. T. 35,300-1.)

1 the Five-Year Plan of his predecessor in office

2 HOSHINO^{a.} which has been described in the General Sum-
3 mation of the prosecution.

4 VV-60. He was also active in the formulation
5 of other plans which the prosecution contends could
6 only have had as their object the planning and prepa-
7 ration for war.

8 VV-61. The Traffic Mobilization Plan^{a.} of
9 5 September 1941 was announced in the press as a plan
10 to place land and sea transportation on a wartime basis
11 to meet the requirements of the times but SUZUKI^{b.} denied
12 that it was a plan in preparation for war. The Workers
13 Mobilization Plan^{c.} of 13 September 1941 was described
14 in the press as a scheme, jointly formulated by the
15 Planning Board and the Welfare Office, based on the
16 emergency labour policy and aimed at insuring the supply
17 of sufficient labour for the increased production of
18 munitions. Again SUZUKI^{d.} denied that this was a war
19 plan.
20

21 VV-62. In addition to the foregoing the
22 attention of the Tribunal is directed to the Key
23 Industries Control Ordinance^{a.} of 30 August 1941. The

24 (VV-59. a. T. 35,293.

25 VV-61. a. Ex. 1133, T. 10,213.

b. T. 35,297.

c. Ex. 1140, T. 10,228.

d. T. 35,298.

VV-62. a. T. 8,403.)

1 witness Liebert^{b.} describes this as the most sweeping
 2 of all control ordinances. It was to serve as a foun-
 3 dation for the complete control of all major industries
 4 by the government. In his affidavit^{c.} SUZUKI points out
 5 that the outlines of this plan were formulated prior
 6 to his assumption of office as President of the Planning
 7 Board; nevertheless, the law was passed during his
 8 tenure of office.

9 VV-63. Attention is also directed to the
 10 Imperial Petroleum Company Ordinance^{a.} passed on
 11 15 March 1941. As SUZUKI points out^{b.} this was before
 12 he assumed office but the company itself was organized^{c.}
 13 on 1 September 1941 after he became President of the
 14 Board.

15 VV-64. Attention is also drawn to the creation
 16 of the Sixth Committee. This Sixth Committee was set
 17 up, SUZUKI states,^{a.} in order to supplement material
 18 necessary for carrying on a war for national self-
 19 defense against America, Britain and The Netherlands
 20 which might be unavoidable in view of the surrounding
 21 circumstance. The function of the committee was to work
 22 out plans for the development, acquisition and control
 23 of resources in the Southern Areas which might possibly
 24

25 (VV-62. b. T. 8,403. c. T. 35,240.
 VV-63. a. T. 8,290. c. T. 8,476.
 b. T. 35,241.
 VV-64. a. T. 35,244.)

1 be occupied. On 2 December 1941, when the opening
2 of hostilities had been decided upon he was ordered
3 by the Prime Minister to act as chairman of the committee.

4 VV-65. The Regulations^{a.} of the Sixth Committee
5 and its Report^{b.} on Economic Counter Plans for the
6 Southern Area are in evidence, and are not discussed in
7 detail in this summary. It is quite evident that the
8 war of "self-defense" contemplated the acquisition and
9 exploitation of resources on the Southern Areas which
10 it was planned to occupy.

11 VV-66. It is also to be observed that on
12 several occasions SUZUKI attended meetings of the Privy
13 Council and the Investigating Committee of the Privy
14 Council^{a.} as an explaining member. In his affidavit he
15 states^{b.} that the function of an explaining member is
16 to make such necessary explanations as may be ordered
17 by the minister in charge and did not include the right
18 to vote. The matters discussed at the meetings in July
19 1941 were the conclusion of a protocol between France
20 and Japan with regard to the defense of French Indo-
21 China.
22

23 VV-67. At the meeting on 8 December 1941 the

24 (VV-65. a. Ex. 1331, T. 11,944.
25 b. Ex. 1332, T. 11,948.
VV-66. a. Ex. 649, T. 7069.
Ex. 650, T. 7074.
Ex. 1241, T. 10,690.
Ex. 1267, T. 11,306.
b. T. 35,236.)

1 accused SHIMADA reported on the outbreak of war against
2 America and England and at the meeting on 10 December
3 1941 the proposal made by Japan to Germany and Italy
4 regarding a no-separate peace treaty was the subject
5 under discussion.

6 VV-68. It is unnecessary to emphasize the
7 importance of these meetings at which SUZUKI was present
8 as an explaining member.

9 VV-69. Moreover, it was SUZUKI who reported^{a.}
10 to the Emperor on 29 September 1941, that if as a result
11 of war the United States should be prevented from
12 importing rubber and tin from the southern areas, it
13 would not imply any vital blow as they might be replaced
14 by imports from South America and that large-scale
15 production of artificial rubber would be feasible in
16 the United States.

17 VV-70. It is the contention of the prosecution
18 that SUZUKI was active in assisting in the organization
19 of the Greater East Asia Ministry. He attended the
20 meeting of the Investigating Committee of the Privy
21 Council on 9 October 1942,^{a.} as an explaining member
22 as he himself says on cross-examination^{b.} "to clarify
23 the position of the government" regarding the measure.
24

25 (VV-69. a. T. 35,242.
VV-70. a. Ex. 687, T. 12,070.
b. T. 35,247.)

The evidence also shows that at the 4th meeting of
1 the committee when asked if there was any intention of
2 changing the name of the ministry SUZUKI replied^{c.} that
3 he considered the name Greater East Asia Ministry proper
4 because it bespoke straightforwardly the consistency of
5 establishing Greater East Asia and that he had no
6 intention of changing it. On cross-examination he
7 admits^{c.} that one of the main tasks of this new ministry
8 was to exploit the natural resources in the occupied
9 areas. On cross-examination TOGO stated^{e.} that the
10 creation of the new ministry had been planned by the
11 four cabinet board presidents and principally by the
12 Planning Board.
13

14 VV-71. The activities of the Planning Board
15 have been dealt with at some length in order to lend
16 support to the contention of the prosecution that it
17 was an important organ in planning and preparing for
18 aggressive war and in exploiting the areas to be occu-
19 pied and that SUZUKI, as president of that board and
20 a minister of state was actively engaged in the formu-
21 lation and execution of such plans and preparations.
22

23 4. Liaison Conferences.

24 VV-72. It is now proposed to deal with the
25 (VV-70. c. Ex. 687, T. 12,070.
d. T. 35,319.
e. T. 35,756.)

1 there was little or no change made in that decision
2 when it went back to the cabinet. As the Prime Minis-
3 ter was in attendance, generally speaking, whatever had
4 been discussed at the Liaison Conference was approved
5 by the cabinet. After the end of August he only attended
6 such conferences as he was ordered to attend by the
7 Prime Minister,^{c.} but after the establishment of the
8 TOJO Cabinet, Liaison Conferences were held continuously
9 up to the end of November and he attended all of these
10 conferences.^{d.}

11 VV-75. The defendant TOGO was cross-examined
12 with regard to Liaison Conferences and stated^{a.} that a
13 number of these conferences were held between 23 October
14 1941 and 8 December 1941 and that those present,
15 including SUZUKI, were active in accordance with their
16 duties.^{b.} During the beginning of the Liaison Conferences
17 SUZUKI was one of those opposed to the withdrawal of
18 Japanese troops from China within a specified time limit.
19 It was upon the terms of propositions A and B to nego-
20 tiate with the United States, that the views of the
21 Liaison Conference of 1 November 1941 were split into
22 two. The argument was advanced by one group, which
23 included SUZUKI, that there would be no alternative

24 (VV-74. c. T. 35,303. d. T. 35,304.
25 VV-75. a. T. 36,072.
b. T. 36,074.)

1 except to make a decision on war in the event that the
 2 propositions were not accepted.^{c.}

3 VV-76. The decisions arrived at during the
 4 Liaison Conferences in November have been fully dealt
 5 with in the General Summary of the prosecution case.
 6 Attention is drawn here to the Liaison Conference pre-
 7 ceding the Imperial Conference of 5 November 1941, to
 8 the Liaison Conference of 11 November 1941^{a.} when the
 9 draft of the "Principal reasons alleged for the commence-
 10 ment of hostilities against the U.S.A. and Britain" was
 11 adopted; to the Liaison Conference of 13 November 1941,^{b.}
 12 when it was considered what measures would be taken
 13 against foreign countries as a result of the Imperial
 14 Conference on 5 November 1941; to the Liaison Conference
 15 of 20 November 1941,^{c.} deciding upon a military adminis-
 16 tration for occupied territories; to the Liaison Con-
 17 ference of 27 November 1941, where there was unanimous
 18 agreement to wage war against the United States;^{d.} to
 19 the Liaison Conferences of the first week in December
 20 when the terms of the Final Note were discussed.

21 VV-77. It should be pointed out that in
 22 answer to counsel for the accused TOGO, SUZUKI stated^{a.}
 23

24 (VV-75. c. T. 36,062-3.

VV-76. a. Ex. 1175, T. 10,362.

25 b. Ex. 1169, T. 10,332; Ex. 878, T. 8,994.

c. Ex. 877, T. 8,987.

d. T. 36,079.

VV-77. a. T. 35,332.)

1 there may have been some Liaison Conferences he attended
2 and some he did not attend between 1 December 1941 and
3 the outbreak of the Pacific War.

4 VV-78. It appears from his evidence that
5 SUZUKI is endeavoring to minimize both the importance
6 of these Liaison Conferences and the importance of the
7 part that he played at them; he does this by describing
8 himself as a technical assistant ordered to attend and
9 by saying that the decisions of the Liaison Conference
10 were not binding on the cabinet.

11 VV-79. It is submitted that even if SUZUKI
12 attended these Liaison Conferences as President of the
13 Planning Board, that fact is indicative of the importance
14 of the functions of that board particularly during the
15 months immediately preceding the outbreak of war. Also
16 whether or not the decisions of the Liaison Conferences
17 were binding upon the cabinet, and it is submitted that
18 in practice they were, it must not be forgotten that
19 throughout the period SUZUKI was attending such con-
20 ferences he was a member of the cabinet and fixed with
21 the responsibilities of the minister of state. The
22 defendant TOJO in his affidavit describes ^{a.} SUZUKI as
23 one of those cabinet ministers who had a voice in the
24 Liaison Conference.
25

(VV-79. a. T. 36,266.)

5. The Meeting at Ogikubo on 12 October 1941.

1 VV-80. On 12 October 1941 SUZUKI was present
 2 at a conference at the Prime Minister's private resi-
 3 dence at Ogikubo when the War Minister, the Navy Minis-
 4 ter and the Minister for Foreign Affairs were also pre-
 5 sent. SUZUKI in yet another effort to show the unim-
 6 portant part he played at this conference stated^{a.} that
 7 he was present having been directed to make a record of
 8 its proceedings.
 9

10 VV-81. On cross-examination he was asked if
 11 he were a mere secretary at the meeting; he replied^{a.}
 12 that he was not. The main topic was whether or not to
 13 continue negotiations with America and in connection
 14 with this the question of the withdrawal of Japanese
 15 troops from China also came up.^{b,}

16 VV-82. On this question there was a sharp
 17 difference of views between the Prime Minister and the
 18 War Minister.^{a.} The navy really thought war with America
 19 was impossible but did not desire to say so. The army
 20 did not necessarily desire war but vigorously objected
 21 to the withdrawal of troops from China.^{b.}

22 VV-83. SUZUKI stated^{a.} that he did not make

23 (VV-80. a. T. 35,205.

24 VV-81. a. T. 35,304.

25 b. T. 35,304.

VV-82. a. T. 35,205.

b. T. 35,206.

VV-83. a. T. 35,305.)

1 any remark at this conference. He was busy taking
2 notes of what the other ministers were saying.

3 VV-84. In answer to counsel for KIDO^{a.} SUZUKI
4 states that he does not know if the secretary of the
5 cabinet, TOMITA, was present in another room but remem-
6 bers that KIDO records in his diary that TOMITA visited
7 KIDO and gave him a report of what transpired at the
8 meeting.

9 VV-85. Whatever part SUZUKI may have taken
10 in the discussions at Ogikubo, it is noteworthy that
11 he was invited to attend by the Prime Minister and it
12 is submitted is another indication of the fact that he
13 was one of those persons active in the discussions
14 leading up to the outbreak of the Pacific War. This
15 is borne out by the evidence of TOJO who in his affi-
16 davit stated^{a.} that the purpose of the meeting was an
17 informal conversation among the ministers concerned with
18 regard to the prospects of the current American-
19 Japanese negotiations as well as the decision to be
20 taken regarding the issue of peace versus war.
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25 (VV-84. a. T. 35,252.
VV-85. a. T. 36,299.)

6. THE FALL OF THE THIRD KONOYE CABINET

1 VV-86. A portion of the affidavit of
 2 SUZUKI^{a.} is taken up with an account of his various
 3 visits to KONOYE, KIDO, TOJO and HIGASHIKUNI in
 4 October 1941 immediately before the resignation of
 5 the KONOYE Cabinet. He says^{b.} that in this liaison
 6 work he acted strictly as a messenger. These con-
 7 versations are also fully reported in a document
 8 entitled "Facts Pertaining to the Resignation of
 9 the Third KONOYE Cabinet"^{c.} and in KIDO's Diary.^{c.}

11 VV-87. It also appears from SUZUKI's
 12 affidavit^{a.} that on 14 October 1941 KONOYE asked
 13 him to sound out the War Minister as to his views
 14 on the disposition of the political situation after
 15 KONOYE's Cabinet resigned. TOJO told SUZUKI that he
 16 believed that no one but Prince HIGASHIKUNI could
 17 save the situation.^{b.} Late that evening SUZUKI
 18 conveyed this to KONOYE who was greatly elated and
 19 asked him to convey the views of TOJO and himself to
 20 KIDO.
 21

22 VV-88. On the following morning, 15 October,^{a.}
 23 SUZUKI called on KIDO who said it was not customary.

24 VV-86. a. T. 35208-213; b. T. 35243; c. Ex. 1148, T. 10250; d.
 25 c. Ex. 1149, T. 10274; Ex. 1150, T. 10275;
 Ex. 1151, T. 10281.
 VV-87. a. T. 35208; b. T. 35209.
 VV-88. a. T. 35210.

to install a member of the Imperial family as the head
1 of a cabinet and that there seemed to be a group of
2 men in the army who would make their way into war
3 under the leadership of HIGASHIKUNI so he (KIDO) would
4 think it over carefully.

5
6 VV-89. SUZUKI reported this to KONOYE and
7 a little later KIDO telephoned and SUZUKI went to see
8 him. KIDO asked him to go to the War Minister and
9 ask if he can hold down the army's war faction if
10 HIGASHIKUNI heads the government and decides against
11 war. a.

12 VV-90. He saw TOJO who said if HIGASHIKUNI
13 heads the government and decides on a no war policy
14 and if it cannot check the army, under whose premier-
15 ship can it be checked. TOJO could not say then
16 whether or not it could be checked.

17 VV-91. SUZUKI conveyed this to KIDO and
18 early the next day he was called by KONOYE to see
19 HIGASHIKUNI and inform him as to the nation's strength. a.
20 He told HIGASHIKUNI that Japan was not sufficiently
21 strong to go to war. b.
22 He reported to KIDO what had
23 transpired since the previous day and that afternoon

24 VV-89. a. T. 35210.

25 VV-91. a. T. 35211.

b. T. 35307.

1 KONOYE told SUZUKI that it had been decided not to
2 ask HIGASHIKUNI to head a government and that the
3 cabinet would resign.^{c.}

4 VV-92. In his cross-examination^{c.} SUZUKI
5 stated that about the time of the fall of the Third
6 KONOYE Cabinet he went to see KIDO and told him the
7 only way to suppress the attitude of the army was to
8 have the Emperor state that he did not want a war.
9 SUZUKI remembers that KIDO did not agree with his
10 views.

11 VV-93. He was cross-examined^{a.} on this
12 conversation by counsel for KIDO and stated that he
13 thought that the conversation was on 13 October 1941,
14 and that KIDO had said that perhaps in the final
15 analysis it might be necessary to petition the
16 Emperor for his influence but that it was not yet the
17 proper time. SUZUKI says^{b.} he made the same sugges-
18 tion to KONOYE who said it would be necessary to
19 obtain the agreement of the War, Navy and Foreign
20 Affairs Ministers and if such an agreement were ob-
21 tained, it would be no matter at all to petition the
22 Emperor and asked SUZUKI, first of all, to obtain

24 VV-91. c. T. 35212.
VV-92. a. T. 35305.
25 VV-93. a. T. 35326.
b. T. 35327.

1 the opinion of TOJO. After meeting the War Minister,
2 it was found that the matter was difficult and it was
3 then that he spoke to KIDO about the matter.^{c.}

4 VV-94. The prosecution attaches importance
5 to the activities of SUZUKI in this period immediately
6 preceding the fall of the Third KONOYE Cabinet because
7 it is made clear that SUZUKI was busily engaged in the
8 political manoeuvres of the day and had an intimate
9 knowledge possessed by few people of what was going
10 on behind the scenes in Japanese politics leading to
11 the formation of the TOJO Cabinet.

12 7. THE TOJO CABINET.

13 VV-95. When SUZUKI was informed^{a.} by KONOYE
14 that TOJO would form a Cabinet KONOYE went on to say
15 that he believed that TOJO would check the war faction
16 and proceed with the American negotiations and when
17 asked by TOJO to continue in his office he consented in
18 conformity with the advice of KONOYE.

19 VV-96. He was cross-examined^{a.} as to whether
20 he thought that TOJO would be able to check the war
21 faction; he replied that TOJO himself did not neces-
22 sarily seem to advocate war on his own but there was
23 some hidden power pushing this war agitation. At this

24 VV-93. c. T. 35328.
25 VV-95. a. T. 35213.
VV-96. a. T. 35200.

time the army was waging war.

1 VV-97. Upon becoming Prime Minister TOJO
2 told SUZUKI^{a.} that it was his desire that SUZUKI
3 concentrate his energy on the work of economic mobili-
4 zation and not to meddle in political affairs.

5 VV-98. Two questions were put to SUZUKI by
6 TOJO^a -
7

8 (I) If the American-Japanese negotiations
9 should be broken off and no prospect exists for the
10 termination of the economic severance, to what extent
11 may Japan maintain her supply of commodities.

12 VV-99. SUZUKI answered that while there
13 would be some increase in the steel produced there
14 would be a decrease in commodities from Thailand and
15 Indo-China because American and British interference
16 must be expected, and further that the prospect was
17 anything but bright in respect of commodities to be
18 imported from the United States, Great Britain and
19 the Netherlands, especially in the case of petroleum.
20 The manufacture of artificial petroleum could not meet
21 the urgent needs.^{a.}
22

23 VV-100. (II) If Japan should succeed in the
24 event of war in occupying the natural resources zones

25 VV-97. a. T. 35214.
VV-98. a. T. 35215.
VV-99. a. T. 35217.

1 in the Southern Regions without serious damage, how
2 far could self-supply be expected?

3 VV-101. SUZUKI answered that shipping would
4 be difficult, the supply of steel would diminish and
5 imports from French Indo-China and Thailand, particu-
6 larly rice, would be reduced. With regard to imports
7 from the Southern Regions an estimate could not be made
8 by the Planning Board but according to the studies
9 made by the Army and Navy ministries the petroleum
10 obtainable in the first year would approximate
11 300,000 tons and in the second year would approximate
12 2,000,000 tons provided that the Southern Areas could
13 be occupied after the outbreak of war. ^{a.}

14 VV-102. SUZUKI states in his affidavit ^{a.}
15 that the policy of TOJO to bring about the successful
16 conclusion of the American-Japanese negotiations was
17 concretely manifested in the decision of the Imperial
18 Conference 5 November 1941 which decided to withdraw
19 the armed forces from China to make the negotiations
20 successful.
21

22 VV-103. Furthermore, the conditions for
23 conducting the negotiations were more favorable at the
24 time of the KONOYE Cabinet by the recognition of the

25 VV-101. a. T. 35218-9.
VV-102. a. T. 35220.

1 withdrawal of troops which had been vigorously opposed
2 by the army. Moreover, the troops which had advanced
3 into Southern Indo-China were to be withdrawn.

4 VV-104. The fact is, it is submitted, that
5 the decision^{a.} to withdraw the troops from China made
6 at the Imperial Conference on 6 November 1941 did not
7 contemplate an immediate or complete withdrawal. It
8 was decided that "among the Japanese troops dispatched
9 to China for the disposal of the Chinese Incident,
10 those in the designated areas in North China and
11 Mongolia and on Hainan Island will be stationed there
12 for a necessary term after the establishment of peace
13 between Japan and China. Simultaneously with the
14 establishment of peace, we shall commence to with-
15 draw the rest according to a separate agreement
16 between Japan and China, and with the establishment of
17 public order this will be completed within two years."

18 A note appended thereto states that "If the
19 United States should make an inquiry as to the necessary
20 term, it will be replied that our aim will be approxi-
21 mately 25 years."

22 VV-105. With regard to the withdrawal of
23 troops from French Indo-China the decision was^{a.}
24

25 VV-104. a. Ex. 779, T. 7904.
VV-105. a. Ex. 779, T. 7904.

1 "That the Japanese troops now dispatched to
2 French Indo-China will be withdrawn immediately after
3 the settlement of the China Incident, or after an
4 impartial peace will have been established in the Far
5 East."

6 VV-106. On cross-examination^{a.} when informed
7 that the decision was that there would be no with-
8 drawal until peace between China and Japan had been
9 come to, he replied that he thought peace and the
10 withdrawal of troops are one and the same thing.

11 VV-107. He stated further on cross-examina-
12 tion^{2.} that he did hear that a decision to withdraw
13 the armed forces from China to make the negotiations
14 successful had certain qualifications attached to that
15 withdrawal but it was also decided that, depending on
16 the progress of the Japanese-American negotiations,
17 those conditions could be changed.

18 VV-108. The prosecution submits that the
19 willingness of SUZUKI to serve in the TOJO Cabinet leads
20 to the irresistible conclusion that he was willing to
21 plunge Japan into war, a conclusion which is supported
22 by his subsequent conduct.

24 VV-106. a. T. 35312.

25 VV-107. a. T. 35310.

8. THE IMPERIAL CONFERENCES.

1 VV-109. Whatever doubt may exist as to
2 SUZUKI's attendance at the Imperial Conference of
3 2 July 1941, he does not deny that he attended the
4 Imperial Conference of 6 September 1941, 5 November
5 1941, and 1 December 1941.^{a.} The decisions made at
6 these conferences have been fully discussed in the
7 General Summary of the case for the prosecution. It
8 is enough to say that SUZUKI cannot escape from assum-
9 ing his share of the responsibility attaching to the
10 decision made at these conferences which includes the
11 decision for war on 1 December 1941.^{b.}

13 9. THE DECISION FOR WAR.

14 VV-110. SUZUKI states that the determination
15 to continue the Japanese-American negotiations was
16 nullified by the American reply of 26 November. He
17 heard the Foreign Minister explain that the reply was
18 tantamount to an ultimatum and being told that it con-
19 stituted virtually an ultimatum he could not but sense
20 that war with America might be unavoidable.^{a.}

22 VV-111. He was directed, he states, to at-
23 tend the conference between the government and Senior

24 VV-109. a. Ex. 1107, T. 10140; T. 35236.

b. T. 36080.

25 VV-110. a. T. 35223.

1 Statesmen on 29 November and to answer such ques-
2 tions as might be put to the government regarding
3 national economic strength.^{a.} He was asked questions
4 by Admiral OKADA regarding shipbuilding capacity and
5 airplane production and by another questioner regard-
6 ing the supply of steel.^{b.}

7 VV-112. SUZUKI attended the meeting of the
8 cabinet on 1 December before the Imperial Conference
9 when TOJO said that war with America was unavoidable
10 and the army and navy will turn to war operations.
11 However, TOJO stated, as related by SUZUKI, when
12 we see a definite chance for success in negotiations,
13 the war operations will be immediately suspended and
14 the government will turn to negotiations.

15 VV-113. SUZUKI agreed with the decision
16 believing that this was unavoidable as long as Japan
17 had an American ultimatum.^{a.}
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25 VV-111. a. T. 35223. b. T. 35224.
VV-113. a. T. 35225.

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1 VV-114. The Imperial Rescript for war^{a.} was
2 signed by SUZUKI who stated^{b.} that it was certainly
3 not what he desired but he thought that the opening
4 of hostilities was unavoidable for defensive purposes
5 so long as an ultimatum had already been delivered
6 and Japan was placed in a position liable to be
7 militarily attacked at any moment.

8 VV-115. He states in his affidavit^{a.} that
9 vis-a-vis Great Britain and the United States, which
10 he regarded as militarily one and inseparable, he
11 was convinced that Japan should keep on the most friendly
12 terms and that Japan should never make them an enemy
13 unless indeed Japan was militarily attacked or placed
14 under an immediate menace of attack.

15 VV-116. When asked on cross-examination
16 where he expected to be attacked he replied^{a.} that
17 they did not know where but at the time Japan's national
18 economy had been seriously disrupted and hearing that
19 Japan had been given an ultimatum, he felt they could
20 not be sure when they would be attacked.

21 VV-117. SUZUKI says^{a.} that the final note
22 to America was not discussed at any Liaison Conference
23 or Cabinet meeting that he attended. He never knew

24 VV-114. a. Ex. 1240, T. 10,685 b. T. 35,246
VV-115. a. T. 35,190
VV-116. a. T. 35,313
VV-117. a. T. 35,315

about any note being sent; he did not sign it and did
1 not know its contents until after it was delivered.

2 VV-118. He goes on to say ^{a.} that once
3 the decision that war was unavoidable had been reached,
4 all these more or less technical matters were left
5 to the Foreign Minister to do on his own responsibility
6 in such a way that all proceedings would be in
7 accordance with International Law and therefore he
8 did not have much interest in these matters.
9

10 VV-119. When asked on cross-examination ^{a.}
11 what took place with respect to a note to Great Britain
12 he said that he felt that even to the United Kingdom
13 a note would naturally be sent and if such a note were
14 not sent there would be ample reason why it was not.
15 Therefore, he did not concern himself with it.

16 VV-120. He says ^{a.} that he does not know
17 why no note was sent to the United Kingdom. He recalls
18 very faintly that after the outbreak of war this
19 matter came up for discussion and the Foreign Minister
20 explained that since Great Britain was one with the
21 United States there was no necessity to send such a
22 note because the note would be automatically made
23 known to Great Britain.
24

25 VV-118. a. T. 35,315
VV-119. a. T. 35,315
VV-120. a. T. 35,316

1 VV-121. He admitted that he knew that
 2 Great Britain was a sovereign state and had an
 3 ambassador in Tokyo and Japan had an ambassador in
 4 London but he had no interest whatsoever in such
 5 matters and did not concern himself with it.

6 VV-122. He added ^{a.} that after having
 7 heard all the evidence that he has been presented
 8 on this matter before the Tribunal, he felt that
 9 from his own point of view he would certainly have
 10 sent a note to Great Britain.

11 VV-123. On cross-examination ^{a.} SUZUKI
 12 denied that he knew the hour, place or date for
 13 opening hostilities or that the task force had sailed
 14 for Pearl Harbor. The first time he learned of the
 15 attack was on the morning of December 8. He had gone
 16 at 6:30 a.m. to the Cabinet office to attend a Cabinet
 17 meeting and was then told by the Chief Secretary of
 18 the Cabinet HOSHINO and learned for the first time that
 19 hostilities had commenced. ^{b.} It was after the conclusion
 20 of the war at some prison that the Navy Minister said
 21 something to the effect that the fleet had sailed
 22 one or two weeks before the commencement of hostilities
 23 but he is not too sure what was actually said ^{c.} to him.

24
 25 VV-122. a. T. 35,317
 VV-123. a. T. 35,314
 " b. T. 35,226
 " c. T. 35,314

VV-124. Whether or not, owing to his
1 disinterest, SUZUKI was unaware of the contents of
2 the final note to the United States, or of the plans
3 for the commencement of hostilities on 8 December
4 1941, the prosecution submits that he cannot escape
5 responsibility for the decision to wage an aggressive
6 war contrary to the principles of International Law.
7 His explanation for the failure to notify the United
8 Kingdom of the commencement of hostilities is, in
9 the submission of the prosecution, unworthy of
10 consideration.
11

12 10. PRISONERS OF WAR.

VV-125. In his affidavit SUZUKI refers to
13 a prosecution document.^{a.} This document entitled
14 "The Employment of War Prisoners" is contained in
15 the Foreign Affairs Monthly Report of September 1942,
16 and was published by the Foreign Section of the Police
17 Bureau of the Home Ministry.
18

VV -126. The defense witness KALAYAMA, a
19 Director in the Planning Board states^{a.} that the
20 meeting referred to in the document was not held
21 under the auspices of the Planning Board but under
22 the auspices of the P.O.W. Information Bureau for
23
24

25 VV-125. a. Ex. 1971-A, T. 14,505
VV-126. a. T. 35,164

1 which purpose the Planning Board merely lent its
2 conference room. SUZUKI in his affidavit ^{b.} supports
3 this contention and goes on to say that the Planning
4 Board had not the slightest authority concerning
5 the treatment of P.O.W.

6 VV-127. An examination of the document ^{a.}
7 itself discloses that at the conference certain
8 principles were discussed and decided upon among
9 them being, that P.O.W. shall be transferred to Japan
10 to mitigate the labor shortage and to carry out special
11 important work. Of the industries in the National
12 Mobilization Plan, war prisoners shall be employed
13 for mining, stevedoring and engineering and construction
14 work for national defense. For the time being war
15 prisoners shall be employed in stevedoring in important
16 ports.

17 VV-128. The document also refers to the
18 fact that P.O.W. have been employed in Japan for
19 stevedoring to speed up the transportation of materials
20 in wartime with satisfactory results.

21 VV-129. On cross-examination ^{a.}, SUZUKI
22 admitted that the Planning Board had authority over
23 and was concerned with the supply of and the demand
24

25 VV-126. b. T. 35,247
VV-127. a. Ex. 1971-A, T. 14,505
VV-129. a. T. 35,319

1 for labor in Japan. In part that labor power was
2 supplemented by P.O.W. The labor of the P.O.W. was
3 not limited, he says, to the transportation of
4 munitions alone but was utilized for the purpose
5 of facilitating transportation generally. b.

6 VV-130. The prosecution submits that while
7 the Planning Board is not directly concerned in the
8 treatment of war prisoners, enjoying as it did authority
9 over the supply and demands of labor in Japan, the
10 Board must assume its share of the responsibility for
11 the employment of war prisoners on work directly
12 connected with the prosecution of the war and contrary
13 to the Hague Convention.

14 VV-131. On 17 May 1942, Ott recommended a.
15 to the German Government that certain Japanese be
16 decorated who have made important contributions to
17 German -Japanese cooperation and to the joint waging
18 of war and who at the same time occupy key positions
19 in the Japanese Army or Government. Among those so
20 recommended was SUZUKI, who was described as controlling
21 economic planning in Japan as well as the organization
22 and administrative construction in the southern territories.

23 VV-132. On the strength of this great
24 authority, Ott continues, his connection with the Army
25

VV-129. b. T. 35,220
VV-131. a. Ex. 1272, T. 11,353

1 and his personal relations with TOJO and SUZUKI, has
2 created a position for himself that can be labeled
3 as a kind of Vice Chancellorship. This is shown by
4 his order of rank in the Cabinet at official functions
5 and although he was formerly ambiguous in his attitude
6 towards Germany, SUZUKI has especially recently
7 supported cooperation with Germany and had an
8 important share in the decision of Japan's entry into
9 the war.

10 VV-133. In his affidavit^{a.} SUZUKI states
11 that he never knew that he was called Vice Chancellor,
12 that the order of rank at official events was determined
13 by court procedure and that there was no special personal
14 intimacy between TOJO and himself such as had existed
15 between KONOYE and himself. He declined the invitation
16 to the investiture.

17 VV-134. SUZUKI was decorated^{b.} by the
18 Japanese Government for his services in the Manchurian
19 Incident and for his services in the China Incident.
20 In his affidavit he states that these decorations
21 were conferred on all Colonels and Major-Generals
22 in active service without any special merit.

23
24 12. RESIGNATION ON 8 OCTOBER 1943

25 VV-133. a. T. 35,348-9
VV-134. b. Ex. 126, T. 787

VV-135. At the request of TOJO^{a.} he left
1 the Cabinet and resigned the Presidency of the Planning
2 Board on 8 October 1943.

VV-136. Prior to this in April 1943 he had
3 been appointed^{a.} Administrative Inspector, his duties
4 being to ensure that production increases were made
5 by inspecting the various factories and conditions
6 in them and to take the steps necessary to increase
7 production.
8

VV-137. In December 1943 he was appointed^{a.}
9 Economic Adviser to the Cabinet and in September 1944
10 Chief of the Great Nippon Industry Patriotic Association.
11

(The following portions of the trans-
12 cript, not read, were copied as follows:)

VV-138. To sum up, it is submitted that the
13 defendant SUZUKI is guilty as charged under the
14 conspiracy counts 1 to 5, inclusive, of the Indictment.
15 It has been shown in evidence that as early as 1932
16 he participated in the overall conspiracy charged in
17 Count 1 and the evidence of his subsequent activities
18 as a member of the Bureau of Military Affairs, as Chief
19 of the Political Section of the China Affairs Board,
20 as President of the Planning Board and as a Cabinet
21

22 VV-135. a. T. 35,323
23 VV-136. a. T. 35,322
24 VV-137. a. T. 35,323
25

1 Minister makes it clear that he is also guilty under
2 Counts 4 and 5. In addition, the evidence of his
3 activities in China establishes his guilt under
4 Counts 2 and 3 in respect of conspiracies relating to
5 China.

6 VV-139. Counts 6 to 17, inclusive, of the
7 Indictment relate to the planning and preparation
8 for aggressive war. It is submitted that being a
9 defendant who joined the overall conspiracy as early
10 as 1932, and as his subsequent actions show did not
11 withdraw from the conspiracy, he is guilty of all
12 planning and preparing for war subsequent to that
13 date and is guilty under all of the Counts 6 to 17
14 inclusive. In addition to planning and preparing this
15 overall program for aggressive war there is direct
16 evidence that as President of the Planning Board and
17 a Cabinet Minister, SUZUKI planned and prepared the
18 aggressive wars referred to in Counts 6 to 17, inclusive,
19 and is guilty as charged under those counts.
20

21 Counts 18 to 26, inclusive, relate to
22 initiating aggressive wars. SUZUKI is not charged
23 under Counts 18 and 23 of this group. It is submitted
24 that there is direct evidence that SUZUKI is guilty
25 of initiating the war of aggression as charged under
Counts 20, 21, 22, and 24 and that in addition he is

guilty as charged under Counts 19, 25 and 26 as an
accomplice instigator and accessory by reason of his
guilt in planning and preparing the wars of aggression
referred to in the said Counts 19, 25 and 26.

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1 It is also submitted that the evidence of the
2 activities of SUZUKI in the appointments and offices
3 held by him and referred to above, show SUZUKI to be
4 guilty of waging aggressive war under Counts 27 to 32,
5 inclusive, and Counts 34 to 36, inclusive. This defend-
6 ant is not charged under Count 33. In addition he is
7 guilty under Counts 28 to 32 and 34 to 36 because the
8 evidence established that he was a person guilty of
9 initiating the wars referred to in those Counts.

10 The defendant SUZUKI is charged under Counts
11 37 to 47, inclusive, and Counts 51 and 52 of the
12 offenses contained in Group II of the Indictment relat-
13 ing to murder. It is submitted that being a Cabinet
14 Minister during a part of the period mentioned in the
15 Count, SUZUKI is guilty under the conspiracy Counts 37
16 and 38 which therefore establishes his guilt under Counts
17 39 to 43, inclusive. With regard to the remaining Counts
18 in this group with which SUZUKI is charged, i.e., Counts
19 45 to 47, inclusive, and 51 and 52, it is submitted that
20 the defendant is guilty as charged under these Counts by
21 reason of the fact that the evidence establishes that he
22 was a person who planned and prepared to commit the
23 offenses charged under those Counts.
24
25

1 The remaining Counts in the Indictment 54 and
2 55 are contained in Group III and relate to convention-
3 al war crimes and crimes against humanity. While there
4 is no evidence that the defendant SUZUKI was directly
5 concerned with the treatment of prisoners of war, it is
6 submitted that prisoners of war are in the power of the
7 hostile government and not of the individuals who cap-
8 ture them and their treatment becomes the responsibility
9 of that government and the Ministers of State who com-
10 prise that Government, which includes the defendant
11 SUZUKI. It is also submitted as a Minister of State in
12 the Japanese Cabinet he is guilty of the conspiracy
13 charged under Count 54 and with responsibility for the
14 violation of the laws of war as charged under Count 55.
15 He has an additional responsibility in that as has been
16 shown by the evidence, the Planning Board at the time
17 the defendant SUZUKI was President was instrumental in
18 allocating prisoners of war to work which was directly
19 connected with the operation of the war. In the result,
20 it is submitted that the defendant SUZUKI is guilty as
21 charged.
22

23 BRIGADIER NOLAN: With the permission of the
24 Tribunal, I will ask leave to present Mr. Robert M. Vote
25 of the Bar of Colorado, now a member of the prosecution
staff, who will read the summary of the case against the

defendant TOGO.

1 Mr. Vote.

2 THE PRESIDENT: Mr. Vote.

3 MR. VOTE: TOGO, Shigenori.

4 WW-1. The accused TOGO, Shigenori, is
5 charged in Counts 1-17, 20-22, 24, 26-32, 34, 36-43, 51,
6 54, and 55 of the Indictment. In addition he is named
7 in Counts 25, 35, 44, and 53. As to Counts 25 and 35,
8 the prosecution applied ^{a.} and the Tribunal granted that
9 the charges therein made against this defendant be
10 stricken from the Indictment on 24 January 1947. ^{b.} As
11 to Counts 44 and 53, the charges set out therein will
12 not be pressed by the prosecution against any of the
13 defendants.
14

15 WW-2. The evidence introduced by the prosec-
16 ution against this accused is almost exclusively docu-
17 mentary, consisting of official records of the Japanese
18 and, for a small part, the German Government, as well as
19 a number of radio telegraphic messages sent by the Japa-
20 nese Government and intercepted at the time by the Allie
21 Powers. Against this the defense evidence has based it-
22 self mainly on the statements of a large number of wit-
23 nesses and the lengthy testimony of the accused himself.
24 Most of these witnesses were the accused's immediate
25

(WW-1. a. T. 15827.
b. T. 16120.)

1 subordinates, colleagues or superiors during the period
2 of time covered by the Indictment. The principal wit-
3 ness called on his behalf by the defense was Foreign
4 Ministry Bureau Chief YAMAMOTO, who was the accused's
5 righthand man in the fateful months leading up to the
6 outbreak of the Pacific War and who assisted the accused
7 in the Liaison Conferences in which the Japanese plans
8 were discussed and the final decisions were made. a.

9 A great part of the evidence introduced on be-
10 half of this accused is aimed at explaining the motives
11 for many of his actions and at putting a specific inter-
12 pretation on the documentary evidence submitted by the
13 prosecution. In this respect we contend that most of
14 this documentary evidence is clear and unambiguous and
15 should be allowed to speak for itself. In addition the
16 defense has offered evidence concerning many actions of
17 the accused which are not related to any evidence intro-
18 duced by the prosecution. This evidence was presumably
19 offered to counter the conspiracy charges. With respect
20 to this it is respectfully urged that even if this
21 defense evidence should be taken as conclusive, all it
22 establishes -- if that -- would be that the accused did
23 not at all times actively participate in furthering the
24 conspiracy either because his official position, or lack
25 (WW-2. a. T. 25908.)

1 of position, did not enable him to do so or because he
2 temporarily disagreed with certain actions taken by the
3 other conspirators. His active participation in fur-
4 thering the conspiracy at other times, however, and
5 therefore his promoting of the general objectives of
6 the conspiracy are not countered by this and cannot be
7 explained away in this manner.

8 WW-3. The accused TCGO was born in 1882 and
9 on graduation from the University entered the Japanese
10 diplomatic service in 1912. From then on until he
11 assumed the important position as Director of the
12 European-American Bureau of the Foreign Ministry in
13 early 1933 his career was a routine one in the various
14 minor posts of the diplomatic service. During this time
15 he served in Germany from 1920-1923 and from 1929-1932.
16 From 1925 to 1929 he was assigned to the Japanese Em-
17 bassy in Washington. These various posts afforded him
18 ample opportunity to acquaint himself thoroughly with
19 both countries, the one later to be Japan's main ally,
20 the other, her principal adversary in her aggression
21 against the Western Powers.^{a.}

22
23 WW-4. On 1 February 1933 the accused was
24 appointed Director of the European-American Bureau of
25 the Foreign Ministry and, according to his own testimony
(~~WW-3~~. a. Ex. 127, T. 787-8; Ex. 3612, T. 35385.)

1 assumed his duties in early March of that year. Japan
2 was just then withdrawing from the League of Nations
3 and one of his first duties in his new function was the
4 making of an extensive study of Japan's future foreign
5 policy with regard to European and American countries,
6 now that Japan, as a result of her aggression in Man-
7 churia and the subsequent condemnation of this action by
8 the League of Nations had to a certain extent isolated
9 herself from the community of nations.^{a.} The accused
10 asserts that this study which was officially submitted
11 to Foreign Minister UCHIDA by the middle of April, 1933,
12 represented his basic ideas as to the foreign policy to
13 be followed by Japan, then and later, and that through-
14 out his further career he strove for the fulfillment of
15 the recommendations set out in this study.^{b.}

16 Against this it must be stated that the position
17 in which Japan was placed at that time was a peculiar
18 one. Japan had been condemned as an aggressor by all
19 other civilized nations. She had no allies and could
20 expect no assistance but only strenuous opposition in
21 any further aggressive ventures which she might under-
22 take. World conditions were comparatively stable;
23 Hitler had only just come to power in Germany and his

24 (WW-4. a. T. 35629.
25 b. Ex. 3609-A, 1. 35362; 35630.)

1 future foreign policy had not yet taken shape. The
2 most natural, the only course open to Japan at this
3 time was to achieve a measure of appeasement with the
4 other powers while hanging on to the fruits of her
5 aggression and while strengthening her national power by
6 the development and exploitation of the newly-conquered
7 territory. This is exactly the recommendation made by
8 the accused in his study. Japan should make it clear,
9 he stated, that she entertained no territorial ambitions
10 outside Manchukuo,^{c.} the course which she should follow
11 was to pursue her Manchurian and Mongolian policies and
12 in the meantime keep friendly relations with other
13 powers until these regions had been developed and Japan
14 had established a firm footing on the continent of Asia.
15 While this was being done Japan should avoid troubles
16 and not launch herself on a reckless adventure.^{d.}

17 THE PRESIDENT: We will recess for fifteen
18 minutes.

19 (Whereupon, at 1445, a recess was
20 taken until 1500, after which the proceed-
21 ings were resumed as follows:)
22
23
24

25 (WW-4. c. Ex. 3609-A, T. 35476.
d. Ex. 3609-A, T. 35365; T. 35478;
Ex. 3609-A, p. 25 (not read).)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. VOTE: By this recommendation the accused
4 put himself squarely behind the Japanese policy of
5 aggression in Manchuria and of bringing that region
6 under the complete domination of Japan. The study
7 admits that the much pleaded Russian danger had no
8 relation to Japanese aggression in Manchuria. It
9 states that the Soviet attitude toward Japan had in
10 the past been conciliatory, that even if the Soviet
11 Union should abandon her peace policy, her efforts
12 would be directed towards Western Europe rather than
13 towards Japan,^e that the Soviet Union was afraid of
14 Japan and not Japan of the Soviet Union and that the
15 menace of Bolshevism which Japan pleaded to justify
16 her advances into Manchuria had become such a common-
17 place that it was doubtful to what extent that explan-
18 ation appealed to world opinion.^f If Japan succeeded
19 in the development of Manchukuo her position vis-a-vis
20 the Soviet Union would become very favorable. There-
21 fore, it would be advisable to conclude a nonaggression
22 pact with that nation now.^g A conflict with the
23 Soviet Union should be avoided unless Japan could make
24
25

VW-4.

e. Ex. 3609A, p. 17 (not read)
f. Ex. 3609A, p. 19 (not read)
g. Ex. 3609A, p. 22 (not read)

1 a common front with Great Britain and the United
2 States. As it was clear, however, that the Soviet
3 Union was making efforts to avoid such an occurrence
4 Japan, should, in case of war, stand alone and be
5 condemned as an aggressor.^{h.}

6 The policy as recommended here, although
7 advocating temporary peace, would obviously fit the
8 purposes of the most strenuous advocates of aggression.

9 WW-5. By the year 1936, the accused mean-
10 while having become Director of the European-Asiatic
11 Bureau of the Foreign Ministry after the European-
12 American Bureau had been dissolved on 1 June 1934,^{a.}
13 the world situation had undergone considerable changes
14 since the accused had made his study of international
15 relations in 1933. Germany had risen to power in
16 Europe and had, like Japan, left the League of
17 Nations. It was abundantly clear that as the accused
18 had stated in 1933 Great Britain and the United States
19 would not make a common front with Japan against
20 Russia. Germany, however, was only too willing to
21 find herself an ally in Asia to strengthen her
22 position in Europe.

24 WW-4.

25 h. Ex. 3609A, p. 25 (not read).

WW-5.

a. Ex. 127, T. 787.

1 Informal conversations for the conclusion
2 of a pact against Russia between Germany and Japan
3 had been undertaken in 1935 between Ribbentrop and
4 the Japanese Military Attache in Berlin, the accused
5 OSHIMA. In the spring of 1936 the Japanese Foreign
6 Minister instructed his Ambassador in Berlin to
7 officially ascertain Germany's intentions and desires
8 on this subject. In July an official German proposal
9 was received in Tokyo and taken into consideration by
10 the Japanese Government.^{b.} At the request of the
11 Foreign Minister the accused studied the German pro-
12 posal and submitted his opinion as a basis for dis-
13 cussions between the Foreign Minister and the War
14 Minister. Both ministers agreed with his views and
15 as a result instructions were sent to the Japanese
16 Ambassador in Germany to conduct the negotiations with
17 the German Government accordingly.^{c.} The accused
18 admits his close connection with the conclusion of
19 the pact as Director of the Bureau of the Foreign
20 Ministry which was in charge of the negotiations. He
21 states, however, that he was personally opposed to the
22 conclusion of the pact, it being in his opinion a

24 VW-5.

b. Ex. 477, T. 5914; Ex. 3615, T. 35408-9.

25 c. Ex. 3266, T. 29883; Ex. 3267, T. 29886-94.

mistake to base international agreements on ideological grounds.^d This statement ignores the fact that, whatever¹ may be said of the Anti-Comintern Pact itself, the attached Secret Agreement was clearly not one of ideologies but contained a very concrete alliance against Russia.^e In addition the study made by the accused, which was accepted as the official Japanese view, makes no mention of any objection to the pact whatsoever. On the contrary, it states that the Soviet Union is menacing Japan, that it is therefore necessary in order to smoothly carry out Japan's policy toward the continent, to make common cause with some other nation against the Soviet Union and that it is appropriate and easy to choose Germany for that purpose as both Germany and Japan had similar standpoints in regard to the general international situation. The pact should therefore be concluded but caution should be exercised so as not to bring about a war with the Soviet Union. In addition some advances should be made towards Great Britain as the new pact would undoubtedly antagonize her and a head-on clash with her should be avoided.^f

The accused asserts that the above study

^d WV-5. d. T. 35643-4.

^e Ex. 480, T. 5936-7.

^f Ex. 3267, T. 29,886-94.

1 represents his opinion only "to a certain extent"
2 as it was drawn up by the Bureau of which he was in
3 charge.^{g.} In this he is contradicted by the defense
4 evidence itself which shows that he personally was
5 the responsible author.^{h.} In this light, his asser-
6 tions regarding his opposition, no mention of which
7 is to be found in the document drawn up by him at the
8 time, cannot be given weight.

9 He also makes much of the changes in the
10 text of the Anti-Comintern Pact and the Secret Agree-
11 ment which were proposed by him and in part incor-
12 porated in the final agreements.^{i.} It is considered
13 unnecessary to discuss here the merits of these
14 alterations. A simple comparison between the pro-
15 posals made by him and the final texts of the two
16 agreements should suffice to show of how little
17 importance they were and how the final agreement was
18 not thereby in any manner altered in character.

19 Both the Anti-Comintern Pact and the Secret
20 Agreement, after having been approved by the Privy
21 Council at the meeting of which the accused attended
22 as one of the Government officials directly concerned,
23 were signed on 25 November 1936 and came into force
24

25 VI-5.

g. T. 35644.

h. Ex. 3266, T. 29883.

i. T. 35645-7.

the same day.^j

1
2 WT-6. Any doubts as to the weight of the
3 accused's allegations concerning his opposition to
4 the Anti-Comintern Pact should be dispelled by the
5 fact that he was appointed Ambassador to Germany
6 within a year after the conclusion of the Pact. No
7 government in the world would appoint as its Ambassador
8 to a country with which it had recently concluded a
9 close military and political alliance the very man
10 who, and this is the inference we are invited to
11 draw, had been throughout the strongest opponent of
12 this alliance. Nevertheless, on 27 October 1937,
13 the accused was appointed as Japanese Ambassador to
14 Germany where he arrived on 24 December of the same
15 year.^a

16 At the time that he arrived at his new post
17 the attempts to bring the war between Japan and China
18 to a conclusion through German mediation had been
19 under way for some time. The course of this mediation
20 as well as its outcome -- the declaration by the
21 Japanese Government on 16 January 1938 that it would
22 no longer deal with the Chinese Government -- have

23
24 WT-5.

j. Ex. 485, T. 5968; Ex. 36, T. 5934-5.

25 WT-6.

a. Ex. 127, T. 787-8; Ex. 3612, T. 35385.

1 been dealt with extensively in other parts of the
2 summation.^{b.} As the mediation was carried out by
3 the German Government through its ambassadors in
4 Japan and China, the accused did for the most part
5 not directly participate in the attempts to reach a
6 settlement.

7 Nevertheless by his actions and his words he
8 showed clearly his attitude towards Japan's aggression
9 in China, an attitude which is only confirmed by his
10 later activities as Foreign Minister. The Tribunal
11 is reminded that, as has been pointed out elsewhere,
12 there were at that time two lines of thought within
13 the Japanese Government circles. This division of
14 opinion finally resulted in the Imperial Conference
15 Decision of 11 January 1938, which stated that an
16 effort would be made for a settlement of the incident
17 on the basis of specific Japanese terms and only in
18 case this would prove unsuccessful to break with
19 China and continue the war.

20 It is in this light that the statements of
21 the accused to the German Foreign Minister when he
22 visited him on 10 January 1938 should be considered.
23 He stated that Japan wished for peace and for the
24

25 WW-6.

b. Parts E. 54, E. 55.

1 soonest conclusion of hostilities. However, Japan
2 was determined to carry on the war to its bitter end
3 and conditions of peace would become harder as the
4 war continued longer. The Japanese Government no
5 longer considered Chiang Kai-shek as representative
6 of the Chinese Central Government. Japan was still
7 willing to negotiate with him but if he was not
8 willing to accept the Japanese peace conditions
9 Japan would make peace with each of the provincial
10 governors.^{c.}

11 The accused tries to explain the position
12 taken by him then by asserting that the policy of
13 not dealing with Chiang Kai-shek and of fighting the
14 incident to a military conclusion had already been
15 substantially decided upon and that although he had
16 no connection with the formulation of this policy he
17 naturally expressed the views of his Government. As
18 shown above this is incorrect. The policy of the
19 Japanese Government which was yet to receive Imperial
20 sanction was to continue mediation. What the accused
21 did in fact do was to express the desires and plans
22 of those who advocated continuation of the war.

23 As it turned out the decision of the Imperial
24

25 WJ-6.

c. Ex. 486D, T. 5991.

Conference was never put into execution and only a
1 few days after this decision had been taken, the
2 advocates of continued war brought about the KONOYE
3 statement of 16 January over the strenuous opposition
4 of the Army and the General Staff who stated that
5 they would continue to seek for peace.^{d.}

6 WW-7. The accused's position in relation
7 to Japan's aggression towards China during this
8 period is also clearly shown in the negotiations which
9 took place with Germany concerning German-Japanese
10 cooperation in the exploitation of China. In his
11 own testimony the accused attempts to make it appear
12 that efforts to reach agreement in this respect were
13 started by Germany in May 1938 and that he, being
14 opposed to such an agreement, did his best to thwart
15 these efforts, even going so far as not to follow,
16 or at least, freely interpret the express instructions
17 of his government.^{a.}

18
19 The facts, however, are different. As early
20 as his previously mentioned conversation with the
21 German Foreign Minister on 10 January 1938, it was he
22 who brought up this same subject and stated that Japan

23 WW-6.

24 d. Parts E56, E57; Ex. 486I, T. 6016.

25 WW-7.

 a. T. 36656; Ex. 2228A, T. 15982.

1 had great interest in working hand in hand with
2 Germany in China's economic development.^{b.} A few
3 weeks later, on 28 January, he brought up the same
4 subject and stated that the time would soon come to
5 start conversations about German cooperation with
6 Japan in the new China which was to be constructed.^{c.}
7 At that time at least there had been no approach from
8 the German side, which, if it came at all, was made,
9 according to his own testimony, a full four months
10 later. Nor is there any evidence to show that he
11 had had any instructions from the Japanese Government.

12 It is correct that in the negotiations on
13 this subject, which took place in Berlin in June
14 and July 1938, it proved impossible to reach an
15 agreement. On 29 June, the accused visited the German
16 Foreign Minister and presented to him a memorandum
17 setting out the Japanese point of view. The memoran-
18 dum stated that it had been recognized that Japan
19 and Germany must cooperate economically in China in
20 the spirit of the Anti-Comintern Pact, and that the
21 Japanese Government was prepared to consider
22 Germany particularly benevolently in her economic
23 activities in China.^{d.} In the further discussions

24 WW-7.

b. Ex. 486D, T. 5991.

c. Ex. 4861, T. 6016.

d. Ex. 591, T. 6585; Ex. 592, T. 6588.

1 two main difficulties arose. In the first place
2 Germany wanted to have the agreement deal only with
3 the Japanese-occupied areas of North China, while
4 the accused insisted that the agreement should cover
5 the whole of China because, he stated, the Japanese
6 Government intended to extend its influence over
7 all of that country. On the other hand Japan was not
8 prepared to grant Germany the preferential treatment
9 which Germany desired.^{e.} That Japan was not prepared
10 to allow any nation, even her ally, Germany, to in-
11 fringe upon the monopoly Japan was trying to create
12 for herself in China is not denied. This point was
13 clearly recognized by the Germans themselves. In
14 further discussions concerning the proposed agreement,
15 they complained that not only were the Japanese pro-
16 porals unsatisfactory but that in fact the Japanese
17 authorities in North China were eliminating all
18 foreign trade, including Germany's, and that this could
19 not but give Germany the impression that the Japanese
20 economic policy in North China aimed systematically
21 at a Japanese monopoly to the exclusion of others.^{f.}
22 That they were correct in this supposition has been
23 clearly shown by the evidence in this case. The
24

25 WV-7.

e. Ex. 593, T. 6591.

f. Ex. 594, T. 6597; Ex. 595, T. 6603.

1 differences of opinion between Japan and Germany
2 could not be settled and the proposed agreement was
3 never concluded. Nevertheless, these negotiations
4 show clearly Japan's ultimate aim in her aggression
5 against China which was clearly expressed by this
6 accused, who apparently saw nothing strange in the
7 fact that Japan should decide what the rights and
8 interests of third countries in China were to be.

9 WW-8. It is not contended by the prosecu-
10 tion that this accused took any part in the negotia-
11 tions which were carried on during his ambassadorship
12 in Berlin on the subject of strengthening the Anti-
13 Comintern Pact.

14 WW-9. The accused was appointed Ambassador
15 to the Soviet Union on 15 October 1938 and arrived
16 in Moscow to take up his new position on the 27th
17 of the same month.^{a.}
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25 WW-9.

a. Ex. 127, T. 787-8;
Ex. 3613, T. 35386.

77-10. On 23 August 1940 the Japanese Govern-
1 ment announced that a great number of Japanese foreign
2 representatives, among whom the Ambassadors to the
3 United States, France, Brazil, and Turkey, as well
4 as nineteen ministers and numerous consul-generals
5 and consuls, had been recalled to secure the new Jap-
6 anese foreign policy introduced by the Foreign Minis-
7 ter, MATSUOKA.^a Several days later the accused was
8 added to this list and recalled from his position
9 in Moscow.^b The German Ambassador in Japan reported
10 to his government at the time that it was his opinion
11 that this action was taken to render harmless the ex-
12 ponents of pro-Anglo-Saxon policy. If the accused
13 was recalled for this reason, his recall was not due
14 to the fact that he was not in favor of Japan's policy
15 of aggression but to the fact that, unlike MATSUOKA,
16 he still believed that the aims of the aggression
17 could generally be obtained by measures short of
18 further war. This is borne out by the statement made
19 by Ambassador KURUSU, who, in June 1940, made it
20 clear that for a change from reliance upon the Western
21 Powers to collaboration between Japan and Germany,
22 improvement of Japanese-Russian relations for the
23 duration of the present war was necessary. Both TOGO
24
25
77-10. a. Ex. 540, T. 8296
b. Ex. 3613, T. 35,386

and KURUSU were feverishly working for this and it was
 1 becoming more and more clear that Japan's future lay
 2 in the South and that the enemy in the north must be
 3 made a friend.^{c.}

4 After his recall, the accused left Moscow
 5 on 20 October 1940 and arrived in Japan on 5 November
 6 of the same year.^{d.} From then until he became Foreign
 7 Minister in the TOJO Cabinet, he held no official posi-
 8 tion.

9 77-11. On 16 October 1941, Prime Minister
 10 KONOYE submitted the resignation of his whole cabinet
 11 and subsequently War Minister TOJO was entrusted by
 12 the Emperor to form a new cabinet. TOJO was instruct-
 13 ed by the Emperor that, instead of following the
 14 decision of 6 September he was to undertake a careful
 15 re-examination of the whole political situation, both
 16 foreign and domestic, in deciding Japan's fundamental
 17 policy.^{a.}

18 77-12. On 17 October TOJO requested the
 19 accused to become Foreign Minister in the new Cabinet.
 20 Before accepting the post the accused requested a meet-
 21 ing with TOJO and was received by him in the evening
 22 of that day. TOJO reported to him the general circum-
 23

24 77-10. c. Ex. 522, T. 6170

25 d. Ex. 3613, T. 35,386

77-11. a. Ex. 1152, T. 10,285; Ex. 1154, T. 10,291;
 Ex. 2250, T. 16,198

stances then existing. According to the accused he
1 made it clear to TOJO that he would only accept
2 the portfolio of Foreign Affairs if the Army would
3 consent to make considerable concessions in re-exam-
4 ining the Japanese position in the negotiations with
5 the United States, as the negotiations would certain-
6 ly end in a breakdown if Japan's stand was uncompro-
7 mising even on the one subject of the stationing of
8 troops in China. He would refuse to enter the cabi-
9 net unless there was a fair chance for a successful
10 conclusion of the negotiations. In answer to this
11 TOJO assured him that all pending questions would be
12 re-examined but gave no guarantee as to any concessions
13 to be made. Hereupon the accused agreed to enter the
14 cabinet.
15 a.

16 The accused contends that when he accepted
17 this offer, he was insufficiently informed about the
18 then existing situation, as he had been in retirement
19 during the whole preceding year. He testified that
20 he had only vague knowledge of the contents of the
21 decision of the Imperial Conference of 6 September and
22 knew nothing of the Imperial Conference decision of 2
23 July. His statements are contradictory, however, be-
24 cause he also testified that he was well acquainted
25

T-12. a. T. 35,670-72; T. 36,315

1 with the circumstances surrounding the fall of the
2 KONOE Cabinet and both he and defense witness YAMAMOTO
3 stated that he requested from Prime Minister TOJO
4 specific assurances that on the several points of the
5 6 September decision a re-examination of Japan's atti-
6 tude would be undertaken, which he could not have
7 done had he not known about them. . . .^{b.}

8 77-13. After accepting the post of Foreign
9 Minister, various people inquired from the accused
10 why he had joined the TOJO Cabinet which was generally
11 considered in Japan to be a war cabinet.^{a.} That
12 there was little doubt in Japan that the new government
13 was made up of the most uncompromising elements has
14 been testified to by TOGO's own defense witness TOMI-
15 YOSHI.^{b.} This opinion was shared by Ambassador
16 NOMURA in the United States who, immediately upon
17 hearing about the formation of the cabinet, cabled to
18 the new Foreign Minister requesting to be relieved
19 from his post, as he was trusted by the American authori-
20 ties and considered sincere. He did not want to
21 continue deceiving other people and himself and,
22 although he did not want to flee from the field of
23 battle, resignation was in his case the only way open
24

25 77-12. b. T. 25,939-40; T. 35,670-72

77-13. a. T. 1235, T. 35,524

b. T. 35,528

1 for a man of honor. This telegram was sent by
 2 NOMURA notwithstanding the fact that two days pre-
 3 viously the accused had informed him that Japan wished
 4 to continue the negotiations, NOMURA apparently having
 5 little faith in these assertions. In any event, his
 6 request was refused and he continued to represent the
 7 Japanese side in the negotiations.

8 WV-14. Immediately after the new cabinet
 9 had taken office a series of Liaison Conferences were
 10 started to decide upon the future course of action
 11 to be followed by Japan. The first of these meetings
 12 was held on 23 October and from that day onwards
 13 conferences took place daily until the night of 1-2
 14 November. Towards the end of this period the Liaison
 15 Conference sometimes deliberated until deep into the
 16 night. The subjects studied at these daily meetings
 17 were two-fold. In the first place, it having been
 18 ascertained by the previous cabinet that Japan's mini-
 19 mum demands decided upon by the Imperial Conference
 20 of 6 September had no chance of being accepted by the
 21 United States, an agreement was sought on any modi-
 22 fication which Japan might make in these demands.
 23 In the second place, Japan's total national strength
 24 was subjected to a thorough study. In this, main
 25

WV-13. c. Ex. 1161, T. 10,312 WV-14.a. Ex. 1163, T.10,315,
 d. Ex. 2917, T. 25,920 T. 25,921; T.26,145
 e. T. 36,037 b. Ex. 2916, T.25,912,
 T. 25,922.

1 emphasis was laid on Japan's military strength and
2 Japan's position as regards military supplies, es-
3 pecially oil.^{c.} The scope of these investigations is
4 clearly seen in exhibit 1328 which gives a comprehen-
5 sive list of all the problems that came up for dis-
6 cussion. In these investigations the Foreign Minister
7 was charged with studying the following questions:

- 8 1) The prospects of the European war;
- 9 2) Developments expected to take place in
10 the North, assuming that Japan would
11 initiate a war in the southern regions
12 sometime in the autumn of 1941;
- 13 3) The assistance to be expected from Germany
14 and Italy in case Japan started a war with
15 the United States, Great Britain, and the
16 Netherlands;
- 17 4) The possibilities of attacking Great
18 Britain and the Netherlands only or the
19 Netherlands alone;
- 20 5) The advantages and disadvantages of post-
21 . poning the opening of hostilities until
22 approximately March 1942.^{d.}

23 As a result of these and other studies and
24

25 TT-14. c. T. 26,117, T. 24,885-9
d. Ex. 1328, T. 11,923; Ex. 1329, T. 11,928

the deliberations of the conferees, the decision of
 1 the Liaison Conference of November 1, which was for-
 2 mally sanctioned by the Imperial Conference of Novem-
 3 ber 5, was reached.^{e.}

4 77-15. In the defense of this accused, it has
 5 been contended time and time again that due to his
 6 personal efforts in the Liaison Conference, the strong
 7 position taken by Japan as the result of the 6 September
 8 Imperial Conference was so modified as to make the Jap-
 9 anese proposals more moderate and more acceptable.^{b.}

10 As shown before, the basic Japanese proposal, Proposal
 11 ^{b.} A, presented no real change in the Japanese proposal
 12 of 25 September,^{c.} which in turn contained all the ele-
 13 ments of the Imperial Conference decisions of 6 Septem-
 14 ber,^{d.} although clothed in more diplomatic language.

15 It is clear that these changes on which the
 16 accused relies most heavily in his defense did not
 17 bring any essential difference in the Japanese de-
 18 mands as decided upon in the Imperial Conference of
 19 6 September. Even if the accused made the efforts as
 20 alleged by him it is important to remember that he
 21 concurred in the decision as finally made.
 22

23 As regards the second Japanese proposal,
 24

25 77-14. e. T. 24,885-9; T. 25,922-3;
 T. 25,949; Ex. 1168, T. 10,331; Ex. 2926,
 T. 25,971

77-15. a. T. 35,697, T. 25,924, T. 35,689

b. Ex. 1246, T. 10,918; Ex. 2925, T. 25,964

c. Ex. 1245, T. 10,282; Ex. 1245F, T. 10,792

1 Proposal B, ^{e.} which according to the defense evidence
2 was completely the accused's own idea, ^{f.} it was entire-
3 ly unrelated to any previous Japanese proposals and
4 was merely intended as a temporary measure. The immed-
5 iate consequences of this proposal would be that Japan
6 would withdraw her troops from the southern part of
7 French Indo-China but that, on the other hand, the
8 United States and the Allied Powers would give her a
9 free hand in her war with China.

10 W-16. All these problems referred to above
11 having been studied and discussed in great detail be-
12 tween 23 October and 1 November, the final decision
13 as to the policies to be followed by the new cabinet
14 was taken in the Liaison Conference of 1-2 November. ^{e.}
15
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24 T-15. e. Ex. 1245H, T. 10,811
f. T. 33,682; T. 35,689

25 W-16. a. T. 25,922-3; T. 25,949

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This decision of the Liaison Conference cannot be seen other than as a qualified decision for war. The final absolute demands of Japan on the Western Powers had been decided upon and if these demands were not to be accepted within a definite period of time, Japan would attack. To this decision the accused gave his assent.^b He qualifies his position in regard to this decision of the Liaison Conference on two points. Firstly, he states that Proposals "A" and "B" were not to be considered as the final Japanese concessions but that it was the general purport of these proposals that Japan was interested in.^c He states that he considered that an agreement along the general lines of either of these proposals might well be reached.^d In fact, only after Prime Minister TOJO had assured him that further concessions would be considered in case the attitude of the United States was generally favorable, he agreed to the decision for war in case the negotiations failed.^e That Japan would have been willing to make any change on any essential point in either of these proposals is directly contradicted by the acts of the conspirators

W-16.

- b. T. 35,697
c. T. 36,060-1; 36,043
d. T. 35,697-8
e. T. 35,697

1 themselves and by the repeated clear and express
2 instructions from TOGO to his representatives in
3 Washington and by TOGO's own statements to Ambassa-
4 dor Grew.^f It is also contradicted by TOGO himself
5 and by defense witness YAMAMOTO who stated that it
6 was only after long and vehement discussions that
7 the Liaison Conference could be brought to agree to
8 accept proposals "A" and "B" and they represented
9 the utmost concessions that could be wrung from the
10 military authorities.^g

11 The second contention of the accused is that
12 he opposed the decision to go to war until the very
13 last moment and only agreed when he had to choose
14 between agreement and resignation from the cabinet.
15 In that case another Foreign Minister would have been
16 brought in who would be less desirous for peace and
17 this would result in a lesser chance of success in the
18 negotiations.^h By his own admission, however, he
19 could, by refusing to agree to the decision for war
20 and refusing to resign have made agreement impossible,
21 bringing about the fall of the cabinet.ⁱ In addition
22 to this, it is clear that the opposition he showed to
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24 WT-16.

25 f. Ex. 2918, T. 25,925
g. T. 35,690, T. 25,948
h. T. 35,696
i. T. 36,110

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1 the war decision of the Liaison Conference was based
2 on prudence rather than on principle and on the fact
3 that he was not sure that Japan was strong enough in
4 a military way to wage a successful war against the
5 Allied Powers. He, therefore, advocated in the
6 Liaison Conference of 1 November that Japan should
7 be patient and await a changed situation. This is
8 confirmed by defense witness YAMAMOTO, who quoted
9 TOGO as stating that Japan should delay opening war
10 until the United States participated in the European
11 conflict, and by defense witness TANAKA who, discuss-
12 ing the same subject, stated that it was TOGO's
13 opinion that Japan should wait for the opportunity
14 to mature. When he found that the other members of
15 the Conference would not agree with him, he reserved
16 his decision until the next day and deliberated over
17 the whole matter during the night. He finally, how-
18 ever, in spite of his doubts on the subject, came to
19 the conclusion that as far as the prospects of war
20 were concerned, he was in no position to prove that
21 Japan's military strength was insufficient and this
22 led him to give his agreement to the decision on the
23 morning of 2 November.

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25 WW-16.

j. T. 35,690
k. T. 25,949

l. T. 35,543
m. T. 35,695

1 WW-17. It must be pointed out that this
2 consent was given with full knowledge of all the then
3 existing circumstances. Had the accused not known
4 about Japan's commitments and policies leading up to
5 and after the conclusion of the Tri-Partite Pact,
6 which formulated aggression and expansion in the
7 clearest and most direct terms, he knew about them
8 by this time, for as Foreign Minister his first duty
9 had been to acquaint himself with Japan's inter-
10 national position.^a None of these basic policies
11 had been cancelled or in any way amended. It is true
12 that when he entered the cabinet the immediate diffi-
13 culty facing Japan was the negotiations with the
14 United States, Japan's economic position, and Japan's
15 war in China. Nevertheless, these problems cannot
16 be disassociated from what had gone on before. If,
17 on entering the cabinet, TOGO was not aware of the
18 basic policies of the Japanese Government, and we
19 contend that he was, he still by this time was fully
20 informed, as fully informed as the Tribunal is now.
21 He made these policies his own and in the negotiations
22 with the United States defended them and furthered
23 their aims. Finally, he, of his own free will, gave

24 WW-17.

25 a. T. 35,675; T. 36,001

1 his agreement to attack the United States, Great
2 Britain, and the Netherlands, if the Japanese de-
3 mands, which would have enabled Japan to continue
4 her policy of aggression, would not be agreed to.
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1 WW-18. A decision having been reached to
2 which both Government and High Command had agreed,
3 the next step to take was to lend this policy offi-
4 cial sanction by having it confirmed by the cabinet
5 and the Imperial Conference. This was done and on
6 5 November 1941 the Imperial Conference took place
7 and the decisions previously agreed to received Im-
8 perial sanction.^a

9 WW-19. The final decisions having been
10 taken and the accused having assented to them, he be-
11 came, during the following month, the main figure in
12 furthering the aims of the conspiracy. Personally
13 directing Japan's diplomatic maneuvers, he made the
14 strongest efforts to hide the fact that if the de-
15 mands then presented were not accepted, Japan would
16 immediately take recourse to further aggression. On
17 2 November and again on 4 November, he informed
18 NOMURA that agreement had been reached in the Liaison
19 Conference on Japan's fundamental policy and on the
20 proposals to be submitted to the United States. The
21 present negotiations were to be Japan's final effort
22 and the proposals were truly the last. No further
23 delays were possible as there was a limit to Japan's
24

25 WW-18.

a. Ex. 1168, T. 10,331;
Ex. 2926, T. 25,971

1 forbearance, and her existence and prestige must be
2 protected however great the price. Immediately
3 after the Imperial Conference, the negotiations
4 should be resumed and a decision should be reached
5 at once. NOMURA was to abide strictly by his in-
6 structions and would have no room for discretion.^a
7 The same day, 4 November, he sent NOMURA the text of
8 the Japanese proposal, which was to be approved by
9 the Imperial Conference the next day. As regards
10 the period during which Japanese troops would remain
11 stationed in China, NOMURA was not to mention this
12 and only in case the United States inquired, should
13 he state vaguely that this period would be approxi-
14 mately 25 years. The accused asserts that this was
15 done because he still hoped for moderation of the
16 Japanese proposal on this point and, therefore, wanted
17 to come to a general agreement with the United States
18 by stressing the fact that the stationing of troops
19 would neither be permanent nor for an indefinite
20 period rather than state a definite time limit. As
21 it is clear, however, that in practice the stationing
22 of troops for an indefinite period and the stationing
23 for a period of approximately 25 years are much the

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25 WW-19.

a. Ex. 1163, T. 10,315;
Ex. 2924, T. 25,960

1 same, he must have preferred his Ambassador to stress
 2 vague generalities instead of showing clearly that
 3 there was no concession from the Japanese side on
 4 this point at all. ^b He finally instructed NOMURA to
 5 obtain assurances in advance that Great Britain and
 6 the Netherlands would carry out the stipulations of
 7 Proposals "A" or "B," if either was accepted by the
 8 United States. ^c

9 WW-20. The day before, on 3 November, the
 10 accused had sent for Ambassador KURUSU and requested
 11 him to go to the United States to assist Ambassador
 12 NOMURA in expediting negotiations. The defense has
 13 introduced evidence to show that the decision to send
 14 KURUSU to the United States was not made to deceive
 15 the American Government and to gain time for military
 16 preparations while continuing negotiations. ^a However,
 17 in view of the fact that KURUSU could not, and in
 18 fact did not, arrive in Washington until a very few
 19 days before the final deadline set for the negotia-
 20 tions, ^b it remains an open question what other purpose
 21 his journey could have had. The witness TANAKA has
 22 related to the Tribunal how the day after war had
 23

24 WW-19. h. Ex. 2925, T. 25,964
 i. Ex. 2956, T. 26,098

25 WW-20. a. T. 25,952-9
 b. Ex. 2942, T. 26,032

1 broken out the accused MUTO, who like the accused
2 TOGO had attended all the Liaison Conferences, con-
3 veyed to TANAKA that the dispatch of KURUSU to the
4 United States had been nothing more than a camou-
5 flage of the events leading up to hostilities.^c The
6 same idea seems to have arisen in the minds of other
7 Japanese, as TOGO's own defense witness TOKIYOSHI
8 stated that when he heard about the dispatch of Am-
9 bassador KURUSU he had asked the accused if this was
10 a trick to deceive the United States.^d The accused
11 assured him that this was not so, but he could hard-
12 ly do otherwise under the circumstances. It is true
13 that NOMURA had previously requested that somebody
14 be sent to assist him, but this request was made,
15 without result, when there was still sufficient time
16 for negotiations.^e

17 WW-21. On 5 November, the accused informed
18 NOMURA that the Imperial Conference had approved
19 Proposals "A" and "B." NOMURA should now submit
20 Proposal "A" to the United States and only if that
21 was rejected present Proposal "B," but not without
22 previously requesting instructions. He impressed

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24 WW-20. c. T. 15,871
d. T. 35,524; T. 35,531
25 e. Ex. 2921, T. 25,952
Ex. 2922, T. 25,953

1 NOMURA once again that these were the final proposals
 2 and that delays in the negotiations were not to be
 3 allowed. All arrangements for signing an agreement
 4 with the United States should be completed by 25
 5 November. Nevertheless NOMURA should avoid making
 6 an impression of setting a time limit or of serving
 7 an ultimatum.^a

8 This date of 25 November was chosen by the
 9 accused himself, as it had been decided that the
 10 negotiations would not be continued beyond the end
 11 of November and he considered that four or five days
 12 would be needed after agreement had been reached to
 13 sign a formal agreement.^b

14 On 7 November, NOMURA visited Secretary of
 15 State Hull and handed his Proposal "A." At the same
 16 time he gave him an initial explanation.^c On 10
 17 November, Ambassador NOMURA explained the Japanese
 18 proposal further to President Roosevelt,^d while the
 19 same day Foreign Minister TOGO received Ambassador
 20 Grew to acquaint him personally with the Japanese
 21 point of view.^e He stressed that the situation was
 22 daily becoming more difficult and further protracted
 23

24 WW-21. a. Ex. 1171, T. 10,346; Ex. 2926, T. 25,971
 25 b. T. 36,299-100
 c. Ex. 2923, T. 25,986; Ex. 1246, T. 10,918
 d. Ex. 2927, T. 25,974
 e. Ex. 2918 T. 25,929-37

1 delays were impossible and that he hoped that the
2 United States would understand that Japan, if ex-
3 posed to this economic pressure any longer, might
4 have to resort to self-defense. Japan had been en-
5 gaged in hostilities for four years and was not pre-
6 pared to give up the fruits of these hostilities.

7 WW-22. On 11 November, the accused received
8 the British Ambassador and told him that Japan had
9 submitted her final proposal and had tried to make
10 this clear to the United States. Japan had submit-
11 ted the maximum concessions she was prepared to make
12 and if the United States refused to accept these, it
13 would be useless to continue. As a result of this
14 conversation, TOGO cabled NOMURA that it was unfor-
15 tunate that the United States Government still
16 treated the negotiations as being in the preliminary
17 stage and that NOMURA must make them realize that the
18 Japanese proposals were final.^a The next day, 12
19 November, the accused informed his ambassadors in
20 foreign countries about the progress of the negotia-
21 tions. He stated that it was doubtful whether an
22 agreement could be reached and as further concessions
23 on the part of Japan were out of the question, it was
24 impossible to take an optimistic view and the situation
25

might take a sudden turn for the worse.^b

1 WW-23. In the meantime the Cabinet and
2 Liaison Conference, of which the accused was a
3 member, continued to take further measures in prep-
4 aration for war. On 4 November, the cabinet de-
5 cided on a policy for guiding public opinion in view
6 of the tenseness of diplomatic relations with the
7 United States and Great Britain. News and speeches
8 which would enable the enemy to perceive Japan's war
9 preparations and strategic activities would be
10 banned.^a The Liaison Conference during November
11 convened less frequently than before and met only
12 five or six times.^b On 11 November, the Conference
13 laid down further policies for the conduct of the
14 prospective war^c and adopted a draft of reasons to be
15 alleged for the opening of hostilities, asserting
16 that war had been forced upon Japan by Britain and
17 the United States.^d On 13 November, another Liaison
18 Conference was held during which the measures to be
19 taken at the outbreak of war decided upon at the
20 Imperial Conference of 5 November were once again

22 WW-22. b. Ex. 3836, T. 33,070-1

23 WW-23. a. Ex. 1167, T. 10,330

24 b. T. 26,145

 c. Ex. 919, T. 9261

25 d. Ex. 1175, T. 10,362

1 reviewed and discussed in greater detail.^d On 20
2 November the Liaison Conference decided upon the
3 administration which Japan would introduce in the
4 southern territories which were to be occupied
5 shortly.^f

6 WW-23a. TANAKA, Shinichi testified that it
7 was decided around the middle of November that in the
8 event of the outbreak of war against the United States
9 and Britain, Japan should avoid entering into a state
10 of war against the Soviet Union and an effort should
11 be made to effect a reconciliation between Germany
12 and the Soviet Union.^a This testimony, wholly un-
13 supported by any documentary evidence, if it has any
14 basic foundation in fact at all, is further proof
15 that the Japanese Government did not consider that
16 the time had yet arrived for the execution of the
17 ultimate designs of the conspirators against the USSR.
18 In substantiation of the fact that military operations
19 against the USSR were purely a matter of timing, it was
20 agreed at a Liaison Conference in the latter part of
21 November that if war with Russia broke out, which
22 was not impossible, Japan would occupy the Russian

24 WW-23. e. Ex. 678, T. 8994; Ex. 1169, T. 10,333;

Ex. 1219, T. 10,538

25 f. Ex. 877, T. 8987

WW-23a. a. Ex. 2676, T. 23,337.

1 Maritime Province.^b The evidence is clear that
2 Japan's aggressive intentions against the USSR were
3 limited only by the uncertainty of the outcome with
4 the necessary dispersal of Japanese forces in the
5 anticipated operations against the United States,
6 Britain and the Netherlands. These facts must be
7 considered in appraising the contention of the ac-
8 cused TOGO that at this period he desired termina-
9 tion of Russo-German hostilities.^c Such a desire,
10 if it existed, could only have been borne out of
11 the hope that Japan's burden in a general war would
12 be lessened if her opponents could be divided in such
13 manner as to permit of their defeat singly.

14 WF-24. On 14 November, NOMURA wired TOGO
15 that he would continue the negotiations and fight
16 for success to the very end. He warned that the
17 United States would oppose any Japanese moves to the
18 north or to the south and was prepared to fight.
19 Many nations would participate in the war, which
20 would be a long one, and victory would come to the
21 side which was able to hold out the longest. The
22 present war was already turning against Germany and
23 although the United States was to some extent occupied
24

25 WF-23a. b. Ex. 2676, T. 23,338-40
c. Ex. 3614, T. 35,395; Ex. 3629, T. 35,553;
T. 35,742

1 in the Atlantic Ocean, she was prepared to turn all
2 her strength to the Pacific at a moment's notice.
3 This clear warning by NOMURA against opening the war
4 was ignored by TOGO who, in his answer to NOMURA's
5 telegram, stated that he full well realized the
6 truth of his statements but that the fundamental
7 Japanese policy had been laid down and that it was
8 out of the question to wait any longer and see what
9 course the war would take. NOMURA must understand
10 that he had only a few more days and that further
11 delay was impossible.^a

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25 WW-24.

a. Ex. 1177, T. 10,376
Ex. 1178, T. 10,380

On November 15, NOMURA had a further conversation with Hull, during which the Secretary of State expressed doubt as to the sincerity of Japan's peaceful intentions as long as Japan remained allied to Germany. On 16 November, TOGO, in answer to the American request for a re-statement of Japan's peaceful intentions, instructed NOMURA to inform the United States that there was no objection to their acknowledgement but at the same time he was to point out that this acknowledgement pre-supposed a successful conclusion of the negotiations and that, should the negotiations end in failure, Japan would not be bound by any statements of this nature.^b On 18 November, seven days before the final deadline set by the accused for the conclusion of the negotiations, KURUSU, after his first meetings with President Roosevelt and Secretary of State Hull, wired the accused, stating that the United States was sincere in wishing to conclude the negotiations and was not delaying them purposely. He warned TOGO that Japan should not resort to actions that could not be amended afterwards. He also warned him that the United States would not agree to the Japanese proposal "B", which was too vague and too general.^c

24 W-24 b. Ex. 2934, T. 26,006;
25 Ex. 2936, T. 26,021;
Ex. 2937, T. 26,023.
c. Ex. 1179, T. 10,383

WV-25. The same day, 18 November, the accused
1 explained his foreign policy to the Japanese Diet. He
2 stated that Japan had been engaged in military opera-
3 tions for the past four years and was now marching on
4 to surmount current difficulties. Japan had always
5 been striving for peace in East Asia and for that pur-
6 pose had had to overcome many crises and remove many
7 obstacles. An especially noteworthy effort in that
8 respect had been the Russian-Japanese War. Japan was
9 now advancing as the stabilizing force in East Asia
10 and was endeavoring to inaugurate peace in the whole
11 world. Germany and Italy, having the same aims as
12 Japan, had joined with her in the Tri-Partite Pact and
13 during the past year this Pact had contributed greatly
14 to the construction of a new order in Europe and Asia.^a
15 This speech on foreign policy, which can not be classif-
16 ied as a wartime speech and which was given to explain
17 the policies of the Cabinet to the Japanese Diet,
18 should counter effectively the accused's allegations
19 concerning his opposition to the Tri-Partite Pact.^b His
20 explanation that his actions as Foreign Minister were
21 not always in accordance with his private convictions
22

23 WV-25

24 a. Ex. 2743, T. 24,376-7

25 b. T. 35,662, T. 35,989

T. 36,040

is, of course, no defense at all.^c

1 WW-26. By this time only one more week was
 2 left for coming to an agreement with the United States.
 3 Therefore, in the Liaison Conference on 18 or 19
 4 November the accused proposed that the Conference should
 5 approve the submission of Proposal "B".^a This was
 6 agreed to, the necessary instructions to NOMURA were
 7 dispatched, and the proposal was submitted to the
 8 United States authorities on 20 November.^b On 22
 9 November the United States, having made it clear that
 10 they would not be in a position to reply to this
 11 proposal before the 25th, the accused informed his
 12 Ambassadors in Washington that, although it was very
 13 difficult to bring any change in the deadline previously
 14 established, Japan would be prepared to wait four more
 15 days -- until 29 November -- if the negotiations could
 16 be finished and the signing of the formal agreement
 17 completed by that time. This time, however, the deadline
 18 could absolutely not be changed and after 29 November
 19 things would automatically begin to happen.^c The
 20 accused states that the purpose of Proposal "B" was
 21 by restoring conditions to something resembling normal
 22 relations to create a calm atmosphere and remove the

24 WW-25. c. T. 36,041.

WW-26. a. T. 26,028

25 b. Ex. 1180, T. 10,387;

Ex. 2941, T. 26,029;

Ex. 1245H, T. 10,811.

c. Ex. 1183, T. 10,399;

Ex. 1186, T. 10,407;

Ex. 2946, T. 26,048.

1 imminent threat of an outbreak of war.^d Both the
2 accused and the defense witness YAMAMOTO stated that
3 they had confidence that Proposal "B" would prove
4 acceptable, and that they had full hopes than an agree-
5 ment could be reached on the basis of this reasonable
6 proposal.^e In reality, the situation was different
7 from the one the accused now tries to establish. In
8 the first place, it is clear that he never had much
9 confidence that the United States would accept the
10 Japanese proposal and he informed his ambassadors in
11 foreign countries to this effect, stating that there
12 was very little probability that America would accept
13 this final proposal of Japan and that Japan might well
14 be confronted with the worst in the near future.^f In
15 the second place, exhibit 3445, a draft submitted by
16 the accused HUTO to the Foreign Ministry for the action
17 Japan would have to take if the United States agreed
18 to the Proposal "B" clearly contradicts the assertion
19 that it was the intention to create a calm atmosphere
20 for further negotiations.^g The accused states that
21 the proposals of this draft were changed at his
22 insistence.^h It may be true that his interpretation
23

24 WI-26 d. T. 35,698
e. T. 26,041, T. 35,703
25 f. Ex. 3837, T. 38,074-5
g. Ex. 3445, T. 33,037-42
h. T. 35,703

1 of an agreement to be reached with the United States
2 was less extreme than laid down in this draft but from
3 the instructions which he in fact did give, it is clear
4 that the demands which Japan was to make, and which he
5 allegedly considered reasonable, were not essentially
6 different from the ones laid down in this draft. In
7 the first place, as has been discussed before, the
8 clause that the United States would refrain from
9 measures which would be prejudicial to the restoration
10 of peace between Japan and China did mean the immediate
11 halting of any further aid to the Chinese Government
12 by the United States and Great Britain. This is
13 confirmed by the accused's own instructions and state-
14 ments.¹ The immediate lifting of freezing restric-
15 tions against Japan meant that this country would be
16 provided with further materials. These points corres-
17 pond to items 3 and 4 of the MUTO draft. The accused
18 did also instruct his ambassadors in the United States
19 that at the same time that Proposal "B" was agreed to
20 an agreement would have to be made with the United
21 States that Japan would be provided with 4 million
22 tons of oil annually from the United States and 2
23 million tons annually from the Netherlands Indies.
24

25 WW-26

1. Ex. 2947, T. 26,051;
Ex. 1185, T. 10,407

1 The accused tries to justify this instruction by stating
 2 that the average Japanese imports over the years 1938
 3 to 1940 were 4 million tons and that in 1940 Japan had
 4 almost concluded an agreement with the Netherlands
 5 Indies for an annual amount of 2 million tons.^j It
 6 must, however, not be forgotten that Japan only tried
 7 to contract for these 2 million tons after oil imports
 8 from the United States had virtually ceased and that
 9 the total imports over the years 1938 to 1940 never
 10 exceeded 4 million tons, as is admitted by the accused,
 11 and is also apparent from the testimony of the witness
 12 Liebert.^k During those years Japan was not only fight-
 13 ing a war in China but also creating large reserves for
 14 future need.^l Had proposal "B" been one which was
 15 directed at peace, both with China and with other
 16 countries, Japan would have needed less oil and there
 17 would have been no necessity for continuing the storage
 18 of large reserves. Although the total amount desired
 19 by Japan is less than that laid down in items 1 and 2
 20 of the MUTO draft, the policy adopted is not essentially
 21 different from the one proposed in this draft and the
 22 purposes for which this large amount of oil was needed

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 24 WN-26 j. Ex. 2944, T. 26,041; T. 35,703
 k. Ex. 840, T. 8286;
 Ex. 844, T. 8286
 25 l. Ex. 840, T. 8286
 Ex. 844, T. 8286

1 can well be imagined, for according to the accused's
2 instructions the amount was to be increased gradually.

3 WW-27. On 25 November the Anti-Comintern
4 Pact, concluded in 1936, was prolonged for a further
5 five years and several more Axis Nations adhered to it.^a

6 The accused contends that it was through his efforts
7 that the secret protocol attached to the Pact was
8 abrogated and that as regards the prolongation of
9 the Pact itself, Japan was already committed before
10 he came to office.^b Even though former Foreign
11 Minister MATSUOKA may well have discussed the subject
12 of the prolongation of the Pact with the German
13 authorities, it was still the accused who agreed to
14 and effected the prolongation. The defense evidence,
15 through witnesses, that it was only through the personal
16 efforts and initiative of the accused that the Secret
17 Protocol was abrogated^c is clearly contradicted by his
18 own statements to the German Ambassador at the time.^d

19 The reason why there was no necessity to prolong the
20 Secret Agreement was clarified by himself to the Privy
21 Council on 21 November 1941.^e Germany was at war with
22

23 WW-27

- 24 a. Ex. 495, T. 6046; Ex. 496, T. 6046
25 b. T. 35,663; Ex. 2694, T. 23,563-4
c. T. 35,663; Ex. 2623, T. 35,466
d. Ex. 3835, T. 38,066
e. Ex. 1182, T. 10,391

1 Russia and Japan was not, and another alliance between
2 Germany and Japan, the Tri-Partite Pact, had superseded
3 this one. The accused added on this occasion that as
4 regards the Netherlands Indies, although consultations
5 would still have to take place to reach a definite
6 agreement, Germany understood that they came within
7 Japan's New Order Sphere.

8 WW-28. On 25 November, the Japanese Foreign
9 Ministry authorities in French Indo-China cabled to the
10 accused, stating that they were advised that the United
11 States' reply to the Japanese proposals was to be
12 received that same day and that Japan's military forces
13 were prepared to move. TOGO was requested to keep them
14 informed about the measures to be taken and to notify
15 them whether the status quo in French Indo-China was
16 to be maintained after the outbreak of war.^a The same
17 day the Japanese Ambassador in Thailand informed the
18 accused of the results of his conversations with the
19 Thailand Prime Minister. If Japan moved Southward,
20 Thailand would have to be brought into the Japanese
21 campaign. For an attack on Burma and Malaya a temporary
22 infringement of Thailand territory would be necessary,
23 but restitution of Thailand sovereignty should be
24

25 WW-28

a. Ex. 1187, T. 10411

1 effected as soon as possible. He requested the accused
2 to consider these points when making Japan's proposal
3 to Thailand for co-operation and joint defense.^b The
4 final preparations for Japan's military advance were
5 now under way.

6 THE PRESIDENT: We will adjourn until half-
7 past nine tomorrow morning.

8 (Whereupon, at 1600, an adjournment
9 was taken until Tuesday, 2 March 1948, at
10 0930.)

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b. Ex. 1188, T. 10,414

2 MARCH 1948

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Tuesday, 2 March 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE LORD PATRICK,
Member from the United Kingdom of Great Britain, not
sitting from 0930 to 1600; HONORABLE JUSTICE I. M.
ZARYANOV, Member from the USSR., not sitting from 0930
to 1200.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except ARAKI, HIRANUMA, HIROTA, and UMEZU, who are
5 represented by counsel. The Sugamo Prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 With the Tribunal's permission, the accused
10 KIMURA will be absent from the courtroom for the
11 entire morning conferring with his counsel.

12 Mr. Vote.

13 MR. VOTE: Continuing with the TOGO summation
14 at paragraph 29:

15 On 26 November, Ambassadors NOMURA and
16 KURUSU informed the accused that there was no hope
17 that the United States would accept the Japanese
18 proposal "B" in its entirety, and that the negotia-
19 tions would certainly break down.^{3.} The only way
20 which could possibly at this stage be of any help was
21 to have President Roosevelt send a personal telegram
22 to the Emperor of Japan. This would clear the air and
23 if NOMURA and KURUSU would have a little more time
24

25 W-29. a. Ex. 1189, T. 10418;
Ex. 2249, T. 16196.

1 they could take the initiative to propose the es-
2 tablishment of neutral countries in the South Pacific.
3 For this, they requested the accused's authorization.
4 After receiving this telegram, the accused discussed
5 it with both TOJO and SHIMADA, as well as with the
6 accused KIDO. He never reported this proposal to the
7 Emperor, although he was received in audience in the
8 morning of 28 November after discussing the matter
9 with KIDO only a few minutes before.^{b.} The accused
10 contends that he was not in a position to report this
11 proposal to the Emperor as he and the War and Navy
12 ministers had no confidence in the plan, although he
13 admitted that it was a matter that came within his
14 competence.^{c.} Valid reasons for keeping this infor-
15 mation from the Emperor do not exist. NOMURA and KURUSU
16 knew, and clearly stated, that the Japanese proposal
17 would not be accepted and that unless special measures
18 were taken war would be inevitable. The accused
19 himself, when he refused to act upon the plan, knew
20 that the United States had definitely rejected the
21 last Japanese proposal and that the negotiations would
22 be broken off.^{c.} The Emperor was known to be desirous
23 of peace but the government had decided on war.

24 WW-29. b. T. 26064-5; T. 35707; Ex. 1206A, T. 10505.

25 c. T. 35818-25.

d. T. 26064-5; Ex. 1193, T. 10442.

1 Consequently, the accused, while reporting to the
2 Emperor on the situation, deliberately omitted to
3 make any mention of this.

4 WW-30. The same day that NOMURA and KURUSU
5 made this last effort, they were received by Secretary
6 of State Hull, who told them that he had thoroughly
7 examined the Japanese note of 20 November and fully
8 consulted the other countries concerned, but that
9 unfortunately it was impossible to agree to the
10 Japanese views. Instead he offered another proposal
11 containing the views of the United States Government.
12 NOMURA, in transmitting this proposal, informed the
13 accused that he had clearly expressed that the American
14 proposal would not be acceptable to the Japanese
15 Government.^a He could see no more prospect whatso-
16 ever of coming to an agreement within the time limit set
17 by the accused. He advised him that, as he had never
18 set an ultimatum or spoken of any time limit to the
19 American authorities, it would be necessary to
20 terminate the negotiations in one way or another
21 before taking freedom of action. Otherwise Japan would
22 be blamed for prolonging the negotiations while pre-
23 paring for military action and for starting hostilities
24 WW-30. a. Ex. 2952, T. 26065; Ex. 12451, T. 10815.
25

b.

1 while the negotiations were still in progress. The
2 fear expressed by FOMURA in this telegram was well
3 founded. The action he warned against was exactly the
4 action the conspirators were now going to take. Im-
5 mediately after the receipt of the American answer of
6 26 November, sometime during the day of 27 November,
7 the Foreign Ministry started studying how to proceed.
8 The defense witness YAMAMOTO under cross-examination
9 stated that various drafts were submitted to him at
10 that time by his subordinates.^{c.} One of these, exhibit
11 2975,^{d.} was personally studied and amended by him.
12 The draft, as amended, stated that negotiations should
13 not be broken off but that it should be the main pur-
14 pose for the time being to continue them and to guard
15 against revealing the real intentions of Japan to the
16 United States. For this purpose, Ambassador NOMURA
17 and KURUSU should be instructed to state that they
18 were awaiting instructions and in the meantime ask
19 numerous questions concerning the latest American
20 proposal and request further reconsideration on the
21 part of the United States. The Japanese reply should
22 put the blame for discontinuance of the negotiations
23 on the United States, but Japan should not
24

25 WW-30. b. Ex. 2949, T. 26054.
c. T. 26307; T. 26319.
d. T. 26297-9.

1 give the impression that the negotiations would be
2 broken off. The witness insisted that this amended
3 draft, which was later typed out,^{e.} was never shown
4 to the accused and that it did not form the basis for
5 further Japanese actions.^{f.} Apart from the fact,
6 however, that this document embodied the ideas of
7 the one man who was next to the accused in charge of
8 negotiations,^{g.} all the evidence in this case clearly
9 shows that every step taken by Japan in the negotia-
10 tions from this day onwards was completely in accord-
11 ance with the measures set out in this document with
12 one exception. The exception is that the draft sup-
13 posed that Japan would make a reply to the United
14 States prior to the opening of hostilities. This
15 reply should put the blame for future discontinuance
16 of negotiations on the United States but should not
17 give the impression that Japan was going to break off
18 the negotiations. In reality, when the Japanese
19 reply was finally delivered, it was intended to be
20 Japan's last word and it was not delivered prior to,
21 but after, the opening of hostilities.

22
23 W-31. The accused contends that after the
24 receipt of the United States' note of 26 November,

25 W-30. e. Ex. 2975A, T. 26,322.
f. T. 26,300-2; T. 26,319.
g. T. 26,303, 26,319, 26,340.

1 it was clear to himself and to the other members of
2 the Liaison Conference that the United States was no
3 longer interested in any compromise and that the only
4 way open to Japan, which was now asked to give up the
5 gains of her years of sacrifice, was the way of self-
6 defense. He states that he considered resignation
7 but that he decided to stay on as he had still not
8 given up all hope that the United States would re-
9 consider and, if they would not, that he could only
10 agree that Japan must wage war. ^{a.} Consequently, the
11 Liaison Conference during the afternoon of 27 November
12 unanimously decided to go to war, ^{b.} a decision which
13 was still to be formally confirmed by the Imperial
14 Conference. With regard to the accused's defense
15 that he still hoped for reconsideration on the part
16 of the United States Government, it is pointed out
17 that no effort was made to convince the United States
18 Government that the Japanese Government considered the
19 note of 26 November as forcing war upon Japan. On
20 the contrary, the subsequent instructions to the
21 Ambassadors in Washington all aimed at giving the
22 United States the impression that the negotiations
23 would not be broken off and that war was not
24

25 WW-31. a. T. 35706-10.
b. T. 35710, T. 36359.

imminent.^{c.} The A. bassadors were indeed ordered to
 1 ask in general vague terms reconsideration on the
 2 part of the United States, but the bare contents of
 3 the telegrams and telephone conversations on this
 4 subject^{c.} would make it transparently clear, even if
 5 it were not expressly stated in YAMAMOTO's own outline
 6 for the future negotiations, that this was only another
 7 attempt to disguise Japan's real intentions. The
 8 statement of the accused that he hoped for and, in
 9 fact, attempted to reach a diplomatic settlement after
 10 27 November^{c.} cannot be considered other than as a
 11 deliberate falsehood. The accused argues that the
 12 prosecution's contention, that from 27 November the
 13 negotiations were continued because Japan was not
 14 ready to open hostilities, cannot be true because the
 15 difficulty facing him was always not to gain time but
 16 to restrain the military authorities from opening
 17 hostilities immediately.^{c.} He omits to state, however,
 18 that war cannot be started from one day to another and
 19

20
 21 ~~WW-31.~~ c. Ex. 1191, T. 10430; Ex. 1193, T. 10442;
 22 Ex. 1194, T. 10444; Ex. 1195, T. 10449;
 23 Ex. 1200, T. 10473; Ex. 1208, T. 10516;
 24 Ex. 1212, T. 10526; Ex. 1213, T. 10528;
 25 Ex. 2951, T. 26059.

WW-31. d. Ex. 1194, T. 10444; Ex. 1195, T. 10449.
 Ex. 1200, T. 10473; Ex. 2951, T. 26059.

WW-31. e. T. 35713.

1 that long before this time it had been decided that if
 2 hostilities were to be opened it would be on 8 December
 3 1941, not earlier and not later. ^{f.} Until that date
 4 the negotiations had to continue and were continued.

5 WW-32. Immediately after the receipt of
 6 the American reply of 26 November, a beginning was
 7 made with the drafting of the final note, which was
 8 completed except for the last part, containing the
 9 notice of the termination of negotiations, by
 10 30 November. ^{a.} On 28 November the cabinet approved
 11 the decision of the Liaison Conference of the previous
 12 day to go to war. ^{b.} The same day the cabinet decided
 13 to put the newspapers on a wartime basis for the
 14 fulfilment of their national mission as an organ of
 15 the state, ^{c.} and to set up a new secret committee,
 16 the sixty committee, within the cabinet under the
 17 chairmanship of the president of the planning board
 18 to draw up the plans for the economic exploitation of
 19 the southern regions which were now to be occupied. ^{d.}

20 On 29 November, the senior statesmen were called
 21 together to receive such information as the govern-
 22 ment was prepared to disclose, ^{e.} and the accused

24 WW-31 f. Ex. 809, T. 10347-9.

25 WW-32, a. T. 26308-9.

b. T. 35911.

c. Ex. 1192, T. 10438.

d. Ex. 1331, T. 11944.

e. Ex. 1196, T. 10452;

T. 29260, T. 29285;

T. 29307.

1 explained the breakdown of the Japanese-American
 2 negotiations. ^{f.} Later, the elder statesmen reported
 3 their views to the Emperor. ^{g.} Finally, on 1 December,
 4 the Imperial Conference was called to give formal
 5 sanction to the decision to go to war with the United
 6 States, Great Britain, and the Netherlands. ^{h.} On
 7 this occasion again the accused explained how the
 8 negotiations had failed. ^{i.}

9 ^{l.} WW-33. On the basis of the Imperial Con-
 10 ference decision of 5 November, the Liaison Conference
 11 had decided on 13 November that if war was inevitable,
 12 Germany and Italy would be approached immediately to
 13 insure their participation in the war against the
 14 United States and to conclude a "no separate peace"
 15 treaty with them. ^{a.} Soon after this the Japanese
 16 General Staff submitted a request along these lines
 17 to the German Military Attache and on 21 November, the
 18 German Foreign Minister sent instructions to the
 19 effect that Germany was prepared to enter into a "com-
 20 mon war" agreement with Japan. ^{b.} On 28 November, the
 21 German Foreign Minister once again stressed Germany's
 22 willingness to fight by the side of Japan to the
 23

24 WW-32. f. T. 29308; h. Ex. 588, T. 11941.
 25 g. Ex. 1196, T. 10452. i. Ex. 2955, T. 26074.
 WW-33. a. Ex. 878, T. 8994; Ex. 1169, T. 10333, T. 36344.
 b. T. 24643-7; Ex. 601, T. 6637; Ex. 602, T. 6639.

1 accused OSHIMA, who immediately informed the accused
2 TOGO.^{c.} On 30 November, the latter replied to OSHIMA
3 that the negotiations with the United States had now
4 failed and that he should immediately inform Hitler
5 and Ribbentrop and tell them that war might break out
6 any moment. The United States had demanded that
7 Japan refrain from assisting Germany and Italy in
8 case the United States became involved in the European
9 war and this clause alone made any agreement impossible,
10 as the Tripartite Pact had been the cornerstone of
11 Japan's policy throughout the negotiations. Japan
12 would now move southward but did not intend to relax
13 pressure against the Soviet Union and would fight
14 that country in case she joined with the United States
15 and Great Britain in hostilities against Japan.^{d.} On
16 2 December, OSHIMA replied that he had met Ribbentrop
17 for preliminary discussions and that strenuous efforts
18 were made to contact Hitler.^{e.} The same day the
19 accused instructed his consular and diplomatic estab-
20 lishments on the American continent to start burning
21 all but two of their telegraphic codes, as well as all
22 secret documents, in preparation for an emergency
23 situation.^{f.} On 3 December, the Japanese Ambassador

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25 W-33. c. Ex. 603A, T. 6643.
c. Ex. 802, T. 7974; Ex. 1199, T. 10469.
o. Ex. 605, T. 6654.
f. Ex. 1222, T. 10524.

1 in Rome reported that in accordance with the accused's
2 instructions of 30 November he had met Mussolini who
3 had assured him that Italy would declare war on the
4 United States when Japan did and was willing to join
5 the "no separate peace" treaty.^{g.} On 4 December, the
6 accused instructed the authorities in Manchukuo that
7 it had been decided that Manchukuo would for the time
8 being not participate in the war but would regard
9 Great Britain, the United States, and the Netherlands
10 as de-facto enemies.^{h.} The same decision was taken
11 as regards the Chinese puppet Government of Wang Ching-
12 wei.^{i.} Final instructions covering the "no separate
13 peace" treaty were sent by the accused to OSHIMA on
14 6 December,^{j.} in this manner completing all diplomatic
15 preparations for Japan's alliance in the coming war.
16

17 WW-34. g. Ex. 606, T. 6656; Ex. 607, T. 6660.
18 h. Ex. 1214, T. 10530.
19 i. Ex. 1219, T. 10538.
20 j. Ex. 805, T. 7981.
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1 WW-34. After the Imperial Conference of
2 1 December, final meetings of the Liaison Conference
3 were held on 2, 3, 4, and 6 December^{a.} to make last
4 arrangements for the war and to discuss the formal
5 notification which was to be given of the opening of
6 hostilities.^{b.} Much controversy has arisen among the
7 defendants themselves as to what exactly transpired at
8 these meetings. The exact details of this controversy
9 need not concern us here, since the final outcome
10 adopted in accordance with the proposal of this accused
11 was to give a formal notice in an ambiguous form to be
12 delivered immediately prior to the attack. As to the
13 form of this notification, this accused must bear the
14 prime responsibility. It may be true that the text of
15 the final note was approved by the Liaison Conference
16 and that its contents were generally reported to the
17 cabinet without opposition.^{c.} However, the record of
18 this trial is void of any suggestion that, had the
19 accused submitted a differently worded document, it
20 would have encountered serious opposition from either
21 the Liaison Conference or the cabinet. The witness
22 YAMAMOTO stated that in one of his first drafts he
23 inserted a clause reserving freedom of action for
24

25 (WW-34. a. T. 26,145.
b. T. 26,093-7; T. 35,714.
c. Ex. 1207A, T. 10,509; T. 26,096; T. 35,721.)

1 Japan, but that this was later omitted. He further
2 stated that he continually discussed the proposed text
3 with the accused.^{d.} The accused OKA and the witness
4 SHIBA testified that when the Navy Ministry, prior to
5 the Liaison Conferences in which the final note was
6 discussed and approved, received a draft copy from
7 the Foreign Office, there was no mention in it of
8 any reservation or war declaration on the part of
9 Japan.^{e.} OKA further testified that he proposed to the
10 Foreign Ministry that a reservation regarding freedom
11 of action be inserted and had asked at the Liaison
12 Conference when the final note was discussed why this
13 was not done. He then was told by YAMAMOTO that in
14 the circumstances this was unnecessary.^{f.} YAMAMOTO, on
15 his part, denies this,^{g.} but does not deny that in the
16 Foreign Ministry draft which was sent to or discussed
17 with other ministries any reservation as to freedom of
18 action was included nor, indeed, that this draft was,
19 except for details, in any way different from the final
20 note as later sent to the United States.^{h.} The accused
21 himself does not deny the fact that the final text was
22 essentially the same as the text drawn up under his
23

24 (WW-34. d. T. 26,314-6.

e. T. 33,400-2; T. 33,321-2.

f. T. 33,400-2.

g. T. 35,563.

h. T. 26,096.)

25

1 supervision and that he, who, as Foreign Minister, was
 2 responsible for taking the necessary action in accordance
 3 with international law approved it.^{i.} Even though the
 4 other government members agreed to the text submitted
 5 by him, it was not within their competence to decide
 6 if this notification was sufficient under international
 7 law. The assertions of the accused that this final
 8 note was tantamount to a declaration of war, or even
 9 that he so considered it, because it was a rejection
 10 of the American note of 26 November, which was unques-
 11 tionably an ultimatum, must fail.^{j.} In the first place,
 12 this was admitted by the Japanese themselves.^{k.} In the
 13 second place, his fellow accused TOJO clearly stated
 14 that it was not until this trial that he knew that the
 15 United States Government, through interception of radio
 16 messages, had knowledge of the fact that Japan's
 17 proposal of 20 November was considered by Japan as final
 18 or that Japan regarded the American note of 26 November
 19 as an ultimatum.^{l.} Lastly remains the simple question,
 20 that if it was really intended, using the witness
 21 YAMAMOTO's own language,^{m.} to let the United States
 22 perceive Japan's real intentions, then why not state
 23

24 (VI-34. i. T. 35,721, T. 36,100.

j. T. 35,719-20.

k. Ex. 1270A, T. 11,313.

l. T. 36,360-1.

m. Ex. 2975, T. 26,297; Ex. 2975A, T. 26,324.)

1 clearly and unequivocally that Japan would now resort
2 to war? In the light of these facts, the German
3 Ambassador's information concerning the discussions in
4 the Foreign Ministry about the notification to the
5 United States Government ^{n.} may well be given credit in
6 spite of the assertions of the accused. ^{p.}

7 ^{WI-35.} The exact time on which the final
8 notification to the United States should be delivered
9 was left by the Liaison Conference to the decision of
10 the accused, together with the High Command. This was
11 done and the time for delivery first agreed on was
12 12:30 p.m., Washington time, and was later changed to
13 1:00 p.m., Washington time. ^{a.} The evidence on behalf
14 of the accused points out that he had no idea as to
15 how long before the opening of hostilities this would
16 be but that he agreed after being assured that it would
17 be sufficiently in advance. ^{a.} To this, it can only be
18 stated that it was his responsibility as one of the
19 three persons appointed by the Liaison Conference to
20 decide upon this matter, and that -- if he agreed with-
21 out knowing the time which would elapse between the
22 serving of the notification and the attack -- he did
23 not discharge himself of this responsibility by simply

24 (WI-34. n. Ex. 608, T. 6662.

p. T. 35,736.

WI-35. a. T. 26,097, T. 26,126-133, T. 35,716,
T. 35,721-2.)

1 accepting the assurances of others that this time
2 would be sufficient. Apart from the fact, however,
3 that the time for the delivery of the final note was
4 a matter which could not be sensibly discussed without
5 knowledge of the time and place of the attack, there
6 is other evidence to show that the accused was better
7 informed than he desires us to believe. Immediately
8 after the first news of the success of the attack on
9 Pearl Harbor had been received, he was informed of this
10 by the accused OKA by telephone at four o'clock in the
11 morning, ^{b.} and there is no evidence to show that this
12 telephone call one hour after the time set for the deliv-
13 ery of the note evoked any surprise. Then the accused
14 TOJO stated that when the accused came to see him with
15 President Roosevelt's message, he mentioned that it
16 was already too late because at that very same time
17 the Japanese planes were taking off from the carriers. ^{c.}
18 Finally, the Foreign Ministry acted for the military
19 authorities in obtaining military information regarding
20 the Pacific area in general and Pearl Harbor in par-
21 ticular just before the outbreak of war. Specific
22 details about barrage balloons and torpedo nets, as
23 well as the number of American warships in Pearl Harbor
24 (WW-35. b. Ex. 3647; T. 35,927.
25 c. T. 36,411.)

1 from day to day were cabled to the Foreign Ministry.^{d.}
2 The defense has introduced evidence to show that this
3 information, although generally collected by the
4 Foreign Ministry through the espionage activities of
5 its organization abroad, did not actually pass through
6 the hands of the accused himself.^{e.} It was admitted,
7 however, that this information would pass through the
8 hands of the bureau chiefs, the highest officials in
9 the ministry under the minister and the vice-minister.^{e.}
10 It is the contention of the prosecution that it does
11 not make any difference whatsoever as to the guilt
12 or innocence of this accused whether he did or did not
13 know in advance of the exact hour and place of the
14 initial attack. It is sufficient that he did know
15 there was to be an attack within a short time after the
16 hour fixed for the delivery of the note.
17

18 WW-36. With regard to the delivery of the
19 final note and the reasons why it was not delivered at
20 the time decided upon by the Liaison Conference, much
21 evidence has been introduced which it is considered
22 unnecessary to review in detail here. It is pointed
23 out, however, that the last part of the final note was

24 (WW-35. d. Ex. 1256, T. 11,209; Ex. 1257, T. 11,210;
25 Ex. 1258, T. 11,211; Ex. 1261, T. 11,216;
Ex. 1262, T. 11,220; Ex. 1263, T. 11,221.
Ex. 1264, T. 11,224; Ex. 1330, T. 11,938.
g. T. 26,106-7; T. 26,202; T. 35,941.)

1 delayed by the Foreign Ministry in Tokyo for about 15
2 ^{a.} hours. If after that everything had gone exactly
3 according to plan, the note might have been delivered
4 at the arranged time, but the danger that things might
5 not develop as was intended was not considered, in spite
6 of the repeatedly-expressed strong feelings of the
7 Emperor on this subject. ^{b.} The exact role played by the
8 defendant TOGO in the drafting and delivery of the
9 final note has been fully discussed in paragraphs
10 G-134-137, G-141-143, G-146, and G-152 of the General
11 Summary.

12 WW-37. On 6 December, Washington time,
13 President Roosevelt decided to make one more effort to
14 avert war by sending a personal appeal to the Japanese
15 Emperor. ^{a.} This telegram arrived in Tokyo at noon
16 December 7, Tokyo time. ^{b.} The circumstances under which
17 the delivery of the telegram to Ambassador Grew was
18 delayed until 2230 that evening have been dealt with
19 elsewhere and will not be repeated here. The defense
20 has introduced evidence to prove that the accused and
21 the Foreign Ministry authorities had no hand in this
22 delay and that the accused did not know of the contents
23 of President Roosevelt's personal message before he
24

25 (WW-36. a. T. 26,190.

b. T. 36,390.

~~WW-37. a. Ex. 1221, T. 10,542.~~

b. Ex. 1222, T. 10,544.)

received it officially from Ambassador Grew. ^{c.} In view
1 of his refusal to consider the proposition made by
2 NOMURA and KURUSU to the same effect some ten days
3 earlier or even to report this proposition to the
4 Emperor, when there still was time, it makes no dif-
5 ference whether the accused knew or not. The appeal
6 by the President would not have been acceded to or even
7 acted upon by him even if it had not been received too
8 late. That TOGO fully knew of this message long before
9 its delivery to him by Grew has been fully shown in
10 paragraphs G-138-139 of the General Summary and para-
11 graph JJ-81 of the KIDO Summation, to which the Tri-
12 bunal is respectfully referred. When Ambassador Grew
13 finally received the message he immediately requested
14 an interview with the accused and met him at 0030 on
15 8 December. After some hesitation, the accused agreed
16 at least to present the message to the Emperor. ^{d.} By
17 this time, he knew that the Japanese attack was bound
18 to take place within a few hours, but made no mention
19 of this to the American Ambassador. He did, however,
20 call on both KIDO and TOJO, who both agreed that he
21 should see the Emperor and both agreed to the evasive
22 reply which the accused had drawn up. ^{e.} The events of
23

25 (WV-37. c. T. 26,166-70.

d. Ex. 1224, T. 10,551.

e. T. 35,727-9; 35,828; 880-2; 35,900-1.)

1 that night have been discussed in detail in the cross-
2 examination of this accused^{f.} and are also clearly set
3 out in exhibit 3647,^{g.} so they will not be repeated here.
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(WV-37. f. T. 35,825-9; T. 35,869-923.
g. T. 35,923-31.)

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WW-38. As it had previously been planned that
 -1 the accused would receive the American and British
 2 Ambassadors after the outbreak of war to notify them of
 3 Japan's final note,^{a.} Ambassador Grew received a request
 4 to visit the accused in the early morning of 8 December.
 5 When he arrived, he was handed a copy of the final note
 6 and informed of the reply of the Emperor to President
 7 Roosevelt's personal message as drawn up by the accused.
 8 No mention whatsoever was made of Japan's attack and of
 9 war having broken out.^{b.} The accused contends that he
 10 thought that Grew was aware of this,^{c.} but this is
 11 patently untrue as must be clear from the contents of
 12 the conversation between them and the accused's answers
 13 under cross-examination.^{d.} It is only confirmed by the
 14 fact that later in the morning a Foreign Ministry
 15 official called at the United States Embassy and read
 16 the official announcement that hostilities had been
 17 opened.^{e.} Immediately after Ambassador Grew had left,
 18 the British Ambassador was received and was also handed
 19 a copy of the final note. Again no mention was made of
 20 war having broken out until an official declaration of
 21 war was delivered later in the day.^{f.} This was the first

(WW-38. a. T. 26172-3.
 24 b. Ex. 1224, T. 10551; Ex. 3647, T. 35923-31.
 25 c. T. 35942-6.
 d. Ex. 3647, T. 35923; T. 35942-6.
 e. Ex. 1224, T. 10551.
 f. Ex. 1236, T. 10673.)

notice to the British Government that Japan was in any
1 way contemplating attacking Great Britain. The defense
2 of this accused is that as the United States and Great
3 Britain were closely co-operating and the United States
4 was representing Great Britain in the negotiations with
5 Japan, it had not been considered necessary to notify
6 the British Government either of a breaking off of the
7 negotiations or of a declaration of war,^{g.} it being
8 sufficient to terminate the negotiations with the
9 United States in Washington about an hour before the
10 attacks on British territory in South Asia were to be
11 started.^{h.} The third country against which hostilities
12 were opened on 8 December, the Netherlands, was never
13 notified at all, either before or after the outbreak of
14 war. The accused's contention that no hostilities were
15 contemplated and that it was intended to avoid entering
16 into belligerency with the Netherlands need not even be
17 discussed here.^{i.} The fact that this country was not
18 notified was not due to any oversight or delay, but
19 simply because it did not fit with Japan's strategic
20 plans.^{j.} In the light of these actions of the accused,
21 his assertions that he at all times made efforts to com-
22 ply with international law can only be disregarded.
23

24 (WW-38. g. Ex. 1207-A, T. 10509, T. 35731-2.
25 h. T. 35848-52.
i. T. 35752.
j. Ex. 1241, T. 10690.)

WW-39. In the early morning of 8 December,
1 the declaration of war against the United States and
2 Great Britain was approved by the Privy Council. The
3 accused was present and gave the necessary explanations.^{a.}
4 At noon the Imperial rescript declaring war and signed
5 by all members of the Cabinet was issued.^{b.} The same
6 day the accused OSHIMA informed the accused that Germany
7 would issue an official declaration of war on the
8 United States at once.^{c.} On 10 December, the Privy
9 Council approved the formal conclusion of the proposed
10 "no separate peace" Pact which provided for a joint
11 prosecution of the war by Japan, Germany, and Italy until
12 complete victory was attained, while after victory had
13 been won, the three countries would collaborate in
14 establishing a new world order. The accused once again
15 spoke for the government.^{d.} The Pact itself was signed
16 the next day in Berlin.^{e.}

18 WW-40. Now that war had broken out the scope
19 of the accused's duties as Foreign Minister was consider-
20 ably restricted. However, he continued to support Japan's
21 plans and actions with the development of her initial
22 conquests. His statements to the Japanese Diet on
23

24 (WW-39. a. Ex. 1241, T. 10690.
25 b. Ex. 1240, T. 10685.
c. Ex. 1242, T. 10701.
d. Ex. 1266, T. 11303; Ex. 1267, T. 11305.
e. Ex. 51.)

22 January 1942^{a.} cannot leave room for doubt in this
1 regard. The prosecution does not find it necessary to
2 discuss the allegations made in the accused's testimony
3 concerning his attitude towards the conquered nations in
4 East Asia.^{b.} The assertions of the accused concerning
5 his attitude on this subject are no different from what
6 his fellow accused and the defense in general will have
7 us believe. As evidence of his different position on
8 this subject, he points out that he resigned from the
9 cabinet on 1 September 1942 because he refused to agree
10 to the plan to set up the Greater East Asia Ministry.^{c.}
11 However, his testimony concerning the reasons for his
12 opposition shows that it was not Japan's war aims which
13 he opposed but the method by which Japan's conquests were
14 to be secured. The proposed measure would in his opinion
15 antagonize the population of the regions dominated by
16 Japan; in the middle of the war administrative changes
17 should be avoided as this would distract from the urgent
18 prosecution of the war; finally he did not wish to see
19 the authority of the Foreign Ministry restricted, even
20 more than was already the case due to wartime conditions.^{d.}

21 This is confirmed by defense witness YAMAMOTO, who
22

- 23 (WW-40). a. Ex. 1338-A, T. 12027; Ex. 1271, T. 11339.
24 b. T. 35746-56.
25 c. T. 35755.
d. T. 35758-9.

1 testified that the Foreign Ministry was not opposed to
2 the purpose for which the Greater East Asia Ministry
3 was to be set up but that it was thought that it was
4 wrong to create a separate ministry instead of entrust-
5 ing all functions to the Foreign Ministry.^{e.} The actual
6 circumstances surrounding the resignation of the accused
7 will not be discussed here. It is pointed out, however,
8 that if it were true, as the accused will have us be-
9 lieve, that he strongly desired the overthrow of the
10 TOJO Cabinet, it was entirely within his power to do so.
11 His statement that he finally decided to resign person-
12 ally, so as not to cause annoyance to the Emperor,^{f.}
13 can hardly carry much weight in view of all that had
14 gone on before.

15 WW-41. When the accused rejoined the Govern-
16 ment in April, 1945,^{a.} the war had turned against Japan.
17 Germany was on the verge of collapse and it was clear
18 that Japan would lose the war. The only question which
19 could remain at the time was whether Japan should try to
20 seek for peace or whether she would continue the war to
21 the bitter end. The defense asserts that when the
22 accused joined the cabinet he had chosen the first
23 course and agreed to enter the cabinet on the under-

24 WW-40. e. T. 18047-52.

25 f. T. 35761.

WW-41. a. Ex. 127, T. 790.)

standing that this would be done. ^{b.} Even if this were
 1 so it would prove nothing in his favor, but is not
 2 correct. The evidence in this case does not show that
 3 the Japanese Government made any attempts for peace un-
 4 til the beginning of July, 1945. ^{c.} Previous to that
 5 Japan was still resolved to fight on and in the Imperial
 6 Conference of 8 June 1945, it was officially decided
 7 that the war would be continued to the bitter end, ^{d.} a
 8 fact which was partially admitted by the accused himself, ^{e.}
 9 although in his direct testimony he completely ignored
 10 it. ^{f.} It was only at the end of June that the decision
 11 of that Imperial Conference was reversed and it was
 12 agreed to ask for peace. ^{g.}

14 WW-42. Not until 12 July 1945 did the accused
 15 instruct his Ambassador in Moscow to inform the Russian
 16 Government that Japan was desirous of terminating the
 17 war. ^{a.} The peace which Japan was seeking was, of course,
 18 a peace on terms. The accused made it very clear that
 19 Japan would rather fight to the bitter end than sur-
 20 render unconditionally. What the conditions would be
 21 it was difficult to decide and, therefore, it had been

23 (WW-41) b. Ex. 3649-4, T. 3550; Ex. 3641; T. 35596;
 Ex. 3642; T. 35605; T. 35779-80.

24 c. Ex. 2696, 2697, T. 23587.

d. T. 31146.

e. T. 36110-11.

f. T. 35783.

g. T. 31161-3.

25 WW-42. a. Ex. 2696, 2697, T. 23587.)

1 decided to send Prince KONOYE to Russia for direct
2 personal negotiations.^{b.} This plan, however, came to
3 nothing as very shortly thereafter the allies issued
4 the Potsdam Declaration, asking for Japan's surrender.^{c.}
5 As a result of this, as well as of the Russian entry
6 into the war and the prospective destruction of the
7 Japanese homeland, it was finally decided to accept the
8 Potsdam Declaration on 14 August 1945.^{d.} Three days
9 later the Cabinet, of which the accused was a member,
10 resigned and he left office for the last time.^{e.}

11 WW-43. Concerning the countless crimes com-
12 mitted against prisoners of war and civilians of enemy
13 countries under the power of Japan, the accused takes
14 the position that for this matter no responsibility can
15 devolve upon him, because the care and supervision of
16 these prisoners and the general administration of the
17 countries occupied by Japan were entrusted to other
18 government departments, the only duties of the Foreign
19 Ministry in connection with this subject being to
20 function as a Liaison and transmission agency vis-a-vis
21 the outside world. His claims amount in substance to
22 this: whether he did or did not know of the widespread
23 murder, starvation, and ill-treatment to which the
24

25 (WW-42. b. Ex. 2699, Ex. 2700, Ex. 2701, T. 23588.

c. Ex. 2, T. 109.

d. Ex. 5, T. 109.

e. Ex. 127, T. 790.)

1 nationals of enemy countries were subjected by Japan
2 was no matter which concerned him; whether the solemn
3 assurance given by him on behalf of the Government of
4 Japan to the Governments of the Allied countries were
5 consistently and flagrantly violated was not his
6 responsibility; and whether the actual policies of the
7 Japanese Government were openly and directly in contra-
8 diction to Japan's treaty obligations and solemn pledges
9 was outside the scope of his duties. ^{a.} The falseness
10 of these claims must be immediately apparent. As a
11 member of the government and a cabinet minister alone,
12 the accused would be responsible for the general
13 policies of his government even if he, as Foreign
14 Minister, had had no further direct connection with this
15 matter. But as it was, his responsibility is a far
16 greater one. On the one hand, it was he who gave the
17 assurances on the part of Japan -- which would assist in
18 ensuring the safety and good treatment of Japanese in
19 enemy hands, a matter coming under the responsibility of
20 the Foreign Minister ^{b.} -- while on the other hand he, by
21 giving evasive replies to Allied protests and inquiries,
22 by denying the facts brought thereby to his attention,
23 or by simply ignoring them and not replying at all,

24
25 (WW-43. a. T. 35768-76.
b. Ex. 76, T. 684; Ex. 3845, T. 38174;
T. 27133; T. 35775.)

1 condoned and assisted the commission of the crimes now
2 charged against him. The responsibilities of the
3 Foreign Ministry in this matter are clearly set out in
4 exhibit 3845,^{c.} giving the regulations for the
5 establishment of a new bureau within the Ministry to
6 attend to the business regarding Japanese nationals in
7 enemy countries and enemy nationals under the juris-
8 diction of Japan. It is true that this bureau did not
9 commence its duties until 1 December 1942, but the same
10 functions which it was charged with were previously
11 handled by the Treaty Bureau of the Foreign Ministry.^{d.}
12 The mere fact that for the proper discharge of his
13 duties the accused had to seek the co-operation of
14 other government departments in collecting the infor-
15 mation, or the granting of permission for visits and
16 inspections necessary for the fulfillment of Japan's
17 international obligations is certainly no defense which
18 is tenable.^{e.} It is contended by the prosecution that
19 apart from his responsibilities as a Cabinet Minister
20 for Japan's general policies, the Foreign Minister is
21 directly responsible for ensuring that in the treatment
22 of enemy subjects under the power of Japan, Japan's
23 international obligations are fulfilled and that in the
24

25 (WW-43. c. T. 38174.
d. T. 27133; T. 27140; T. 27147.
e. T. 35771.)

1 case of the accused the responsibility is double heavy
2 because it was he who had given for Japan the solemn
3 assurances which were never kept or intended to be kept.

4 WW-44. Although nowhere directly stated, it
5 is inferred in the defense of this accused that, apart
6 from not being responsible in any case, he was also un-
7 aware of the actual policy which was being followed and
8 of the crimes which were committed.^{a.} We request that
9 any such contention be rejected outright by this Tri-
10 bunal. In the general summation on this subject, it
11 has been clearly demonstrated that even if the accused
12 did not know or try to obtain this information directly
13 from Japanese sources, he was well informed of all that
14 happened through the many Allied protests which were
15 addressed to him and the Allied broadcasts which came to
16 his notice, as he himself admits.^{b.} The details of this
17 have been fully set out in Part VI of Appendix B to the
18 general summation and will not be repeated here. It is
19 pointed out, however, that his assertions that during
20 his first term of office the question concerning ill-
21 treatment of prisoners of war did hardly arise is not
22 based on fact.^{c.} As early as 14 February 1942, for
23 instance, the United States lodged protests against the
24

25 (WW-44. a. T. 27152-3; T. 35770-6.

b. T. 35771.

c. T. 35771.)

1 treatment by Japan of American nationals in the Philip-
 2 pines, ^{d.} to which the accused replied by a simple
 3 denial, ^{e.} a denial which was easy to make as he also
 4 refused to allow any third party the right to inspect
 5 prisoners of war and internee camps in occupied terri-
 6 tories, notwithstanding the strong demands made in this
 7 respect by the United States and other countries. ^{f.} The
 8 reason given by him was that the Japanese Government
 9 had established the principles of not recognizing any
 10 representation of interests in occupied territories and
 11 that, therefore, no visits would be allowed to camps in
 12 those regions. ^{g.} The accused himself does not deny that
 13 when he resumed office in April, 1945, the protests
 14 had grown enormously in number and remained for a great
 15 part unanswered. ^{h.} Protests and repeated protests,
 16 answers to which had not been given for many months or
 17 even years, came in almost daily. ^{i.} A particular case

- 19 (WW-44. d. Ex. 1470, T. 12789.
 20 e. Ex. 1472, T. 12791.
 21 f. Ex. 1474, T. 12797; Ex. 1475, T. 12795;
 Ex. 2016-A, T. 14729-30; Ex. 2016 (parts 1-7),
 T. 14733.
 22 g. Ex. 2016-A, T. 14730; Ex. 2016 (parts 8-9),
 T. 14733.
 23 h. T. 35772.
 24 i. Ex. 1486, T. 12817; Ex. 1487, T. 12818; Ex.
 25 2016-A, T. 14744-6; Ex. 2016 (parts 61, 62,
 63, 65, 67, 70, 71, 73), T. 14733; Ex. 2022
 (parts 19, 21, 22), T. 14784-90; Ex. 2025-A,
 T. 14835; Ex. 2025 (parts 8-9), T. 14833;
 Ex. 2052, T. 15014; Ex. 2053, T. 15016;
 Ex. 2059, T. 15051; Ex. 2061, T. 15053;
 Ex. 2064, T. 15062; Ex. 2083, T. 15102;
 Ex. 2084, T. 15103; Ex. 2103, T. 15178;
 Ex. 2107, T. 15200; Ex. 2108, T. 15202.)

1 in point concerned the fate of the American personnel
2 captured on Wake Island. The first protests and in-
3 quiries concerning the matter had been addressed to the
4 accused during his first term as Foreign Minister. ^{j.} No
5 satisfactory explanation having been given yet in 1945 --
6 and indeed none being possible -- it was brought to the
7 accused's attention that by now the Japanese authorities
8 had had three years to inform themselves on the matter
9 and comply with their obligations. ^{k.} Far from showing
10 any improvement the situation deteriorated steadily
11 during the last months of the war. On 14 June 1945,
12 the Swiss Minister went so far as to address the Foreign
13 Ministry in the strongest of terms, stating that the
14 Allied Governments insisted on replies to their demands
15 for information about prisoners or for amelioration of
16 their conditions, but that in spite of the many requests
17 to the Minister for Foreign Affairs he, the Swiss
18 Minister, had not received any reply which would enable
19 him to transmit any information. The many protests made
20 by him remained unanswered or received unsatisfactory
21 answers. The British Government insisted on knowing if
22 the Japanese Government had modified its policy concernin

24 (WW-44. j. Ex. 2034, T. 14932; Ex. 2039, T. 15001;

Ex. 2040, T. 15002.

25 k. Ex. 2052, T. 15014; Ex. 2053, T. 15016.)

1 the treatment of prisoners of war. He, the Swiss
2 Minister, would be extremely embarrassed to reply, but
3 the Foreign Ministry knew as well as he that the situ-
4 ation had perhaps never been as bad as during the last
5 six months.^{1.}

6 Further details are not here necessary. The
7 policy of the Japanese Government was never changed un-
8 til after the final surrender. The accused knew what
9 the policy was and what its results were. He made no
10 efforts to change the policy, but, on the contrary, took
11 an important part in its execution, thereby condoning
12 and approving it.

13 WW-45. It is respectfully submitted that by
14 the evidence in this trial the facts alleged by the
15 prosecution in relation to the accused TOGO have been
16 established and that the charges made against him in
17 the Indictment have been substantiated.

18 (A portion of the summation, which
19 was not read, is as follows:)

20 As regards this part of the prosecution's
21 summation, the evidence relating more particularly to
22 each of the Counts in the Indictment, under which the
23 accused is charged, has been discussed in the paragraphs
24 enumerated below. It must be borne in mind, however,
25 (WW-44. 1. Ex. 2016, part 70, T. 14734.)

1 that in order to avoid needless repetition facts of more
2 general application, which have been dealt with extens-
3 ively in the general parts of the prosecution's summation,
4 have on the whole been omitted or are most briefly re-
5 ferred to in the above.

6 Count 1: Paragraphs 2-42.

7 Count 2: Paragraphs 4, 7, 25, 33, 40.

8 Count 3: Paragraphs 4, 6, 7, 15-18, 21-26,
9 33, 40.

10 Count 4: Paragraphs 2-42.

11 Count 5: Paragraphs 2-42 (particularly 5-7,
12 10, 14-18, 23-24, 27, 33, 39, 40)

13 Count 6: Paragraphs 4, 6, 7, 15-18, 21-26,
14 33, 40.

15 Counts 7-14: Paragraphs 12-42.

16 Counts 15, 16: Paragraphs 15-18, 23-25, 28,
17 32, 40.

18 Count 17: Paragraphs 4, 5, 9, 10, 14, 33,
19 27, 40.

20 Counts 20-22 and 24: Paragraphs 32-39.

21 Count 26: Paragraph 9.

22 Count 27: Paragraphs 4, 7, 25, 33, 40.

23 Count 28: Paragraphs 6, 7, 15-18, 21-26, 33, 40.

24 Counts 29-32 and 34: Paragraphs 32-42.

25 Count 36: Paragraph 9.

Counts 37-43: Paragraphs 32-39.

Count 51: Paragraph 9.

Count 54 and 55: Paragraphs 43, 44.

- - -

MR. VOTE: Mr. Fixel will follow for the
prosecution.

THE PRESIDENT: Colonel Fixel.

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1 (The following portion of the
2 summation, not read, is copied into the
3 transcript as follows:)

4 TOJO, Hideki

5 I. CHARGES AGAINST TOJO.

6 AX-1. TOJO is charged in the Indictment
7 under Counts 1-5, as a conspirator in a plan to secure
8 military, naval, political and economic domination of
9 East Asia, of the Pacific and Indian Oceans, and
10 parts of China; in Counts 6-17, for planning and
11 preparing a war of aggression and a war in violation
12 of international law, treaties, agreements, and
13 assurances against China, the United States of America,
14 the United Kingdom, Australia, New Zealand, Canada,
15 India, the Philippines, Netherlands, France, Thailand,
16 U.S.S.R., and China; in Counts 18-26, for initiating
17 a war of aggression and a war in violation of
18 international law, etc., against China, the United
19 States of America, the Philippines, the British
20 Commonwealth of Nations, France, Thailand, the U.S.S.R.,
21 the Mongolian Peoples Republic; in Counts 27-36, for
22 waging a war of aggression; in Counts 37-44, for
23 conspiring, ordering, causing or permitting the murder
24 and unlawful killing of members of military or naval
25 forces and civilians of the U.S.A., Philippines, Britain,

1 Netherlands and Thailand; in Counts 48-52, for
2 unlawfully causing or permitting attacks on the
3 City of Changsha; the City of Hengyang; the Cities
4 of Kweilin and Liuchow; the territories of Mongolia
5 and the U.S.S.R.; in Counts 53-55, for conspiring to
6 violate the laws of war in reference to P.O.W. and
7 for recklessly failing to observe his legal duty
8 to take adequate steps to secure observance and
9 prevent breaches thereof.

10 - - -

11 MR. FIXEL: May it please the Tribunal.

12 II. TOJO'S MILITARY AND CIVIL POSITIONS.

13 (a) His duties on Army General Staff,
14 1931-1933.

15 λλ-2. TOJO occupied positions of responsibility
16 which were directly connected with the acts, events,
17 and occurrences, which are charged as offenses in the
18 Indictment. On August 1, 1931, he became Chief of the
19 First Section of the Army General Staff, and remained
20 on the General Staff for upwards of two years.^{a.} At
21 that time, NINOMIYA was Vice Chief of the General
22 Staff and TATEKAWA was Chief of the Second Section
23 of the General Staff. These two together with others
24

25 λλ-2. a. T. 791

1 were conspirators in the March Incident, ^{b.} and
2 TATEKAWA was the person who was sent to Mukden by
3 the General Staff with specific instructions to
4 stop impulsive movements of the Kwantung Army prior
5 to the Mukden Incident and who failed to take any
6 action to do so after his arrival in Mukden, because,
7 as he later admitted, he did not desire to stop it. ^{c.}
8 As TOJO was in charge of army overseas operations
9 when the Mukden Incident occurred, and during the
10 subsequent seizure of Manchuria and the North China
11 provinces; the setting up of the Regency; and the
12 first use of force by Japan to gain its overseas
13 expansion, he must be charged with responsibility for
14 what took place, as the First Section, or Operations
15 Section, ^{d.} had charge of Japan's seizure of control
16 of Manchuria by the Kwantung Army during the period
17 following the Mukden Incident. Without TOJO's approval,
18 no military movements could have taken place in North
19 China or Manchuria and no supplies could have been
20 furnished with which to carry on military operations.
21 TOJO thus became a part of the conspiracy to extend
22 Japan's overseas control by using military force in
23 Manchuria.
24

25 AX-2. b. Ex. 179-F, T. 1927-8
" c. T. 2006; 2505-7
" d. Ex. 1983-A, T. 14,594

(b) His duties while Chief of Staff of
Kwantung Army.

XX-3. From 21 September 1935 when TOJO was made Commander of the Kwantung Police and Chief of the Police Affairs Section of the Kwantung Bureau^{a.} until 1 March 1937 when he was appointed Chief of Staff of the Kwantung Army, a position he held until May 30, 1938,^{b.} TOJO assisted in carrying out the overall purpose of Japan in controlling the political, economic and cultural life of Manchukuo. The record shows that in 1934, General TADA officially reported to the Commanding General of the Kwantung Army, that through an advisory system which he had set up, the Kwantung Army had gained complete control of the Manchukuoan Army as well as the local and central government in Manchukuo.^{c.} In view of the importance of the Kwantung Army in the conspiracy while TOJO was in charge of the Military Police and while Chief of Staff of the Kwantung Army in 1937-8, he aided and abetted the initiation of, and the waging of a war of aggression against China, in violation of international law.

XX-4. While he was Chief of Staff of the

XX-3. a. T. 791
" b. T. 793
" c. Ex. 3378-A. T. 32,357-72

1 Kwantung Army, ^{a.} TOJO was openly referred to as one
 2 of the five members of the "Niki Sansuke", ^{b.} a
 3 disagreeable expression used by the Japanese in
 4 referring to the five important Japanese figures in
 5 Manchuria. ^{c.} It was during this time that the Marco
 6 Polo Bridge Incident broke out on 7 July 1937 ^{d.} and
 7 it was this event that precipitated the long China
 8 war. On 9 June 1937, almost a month before this
 9 Incident occurred, TOJO telegraphed the Vice War
 10 Minister and Vice Chief of General Staff that he was
 11 convinced that if Japan's military power permitted it,
 12 a blow should be struck at the Nanking regime. ^{e.} TOJO's
 13 explanation of his action in sending this telegram
 14 shows his utter contempt for upholding the integrity
 15 of agreements entered into by Japan. It is his claim
 16 that the underlying reason for making the recommendation
 17 to strike a blow at China, was to relieve the tense
 18 situation resulting from the menace of the Chinese
 19 Communist Party which publicly professed to fight
 20 against Japan, and to protect the Japanese residents
 21 in the area exposed to imminent danger, as assaults
 22 on their lives and properties were expected momentarily.
 23

24 XX-4. a. T. 793
 " b. T. 36,575
 25 " c. T. 36,576
 " d. T. 2326
 " e. Ex. 672, T. 7336-7, T. 22,026-7, T. 36,173-4

1 It was his belief, he said, that mere appeasement would
 2 only aggravate the Chinese and he therefore recommended
 3 armed force to settle the matter. ^{f.} His action was
 4 violative of the agreements of Japan under which
 5 international disputes would be settled by pacific
 6 means, and it also points to his future course in
 7 the negotiations with the United States, where he
 8 adopted a dogmatic, arbitrary attitude in reliance
 9 on military power.

10 M.-5. In the same telegram in which TOJO
 11 recommended striking a blow at the Nanking Regime, ^{a.}
 12 he said that such action would rid Japan of the menace
 13 at its back, in view of military preparations against
 14 Soviet Russia. TOJO also had a plan, which he submitted
 15 to UMEZU, the then Vice Minister of War, in December
 16 1937, to strengthen aeronautical meteorological
 17 services in the Mongolian areas, "in preparation for
 18 a war with Soviet Russia," ^{b.} and from the "standpoint
 19 of the China Incident." ^{c.} He also recommended extending
 20 the term of military service of troops in Manchuria. ^{d.}
 21 He also advised the Vice Chief of the General Staff
 22 and the Vice War Minister of the scheduled establishment

24 M.-4. f. T. 36,174-5
 25 M.-5. a. Ex. 672, T. 7336-7
 " b. Ex. 719-1, T. 7560-1
 " c. T. 7562
 " d. T. 7563

of anti-Soviet fortifications to be made in 1938
 1 and 1939.^{e.} The witness TAKABE, who from 1935 through
 2 1938 held the office of Chief of the Administrative
 3 Section and then Chief of the Kwantung Territory
 4 Bureau,^{f.} testified that TOJO endeavored to carry
 5 out military measures directed against the Soviet
 6 Union, by using Kwantung Army Special Maneuvers in
 7 Manchukuo for that purpose.^{g.} Later, on cross-
 8 examination, TAKABE tried to explain that TOJO's
 9 actions were "offensive defensive" in nature but
 10 such a shift in his testimony is at variance with his
 11 previous assertion that the military measures taken
 12 were directed at the Soviet through the ruse of
 13 maneuvers. That such maneuvers were not merely
 14 "offensive defensive" as claimed, is clearly disproved
 15 from the plans for aggression against the U.S.S.R.,
 16 as shown by the evidence of witnesses and documents
 17 introduced by the prosecution.^{g.}

19 XX-6. That aggressive action against the
 20 Soviet was contemplated is also apparent from a
 21 recommendation made to the War Minister by General
 22 UEDA on 24 January 1938, Commander of the Kwantung

24 XX-5. e. T. 7565
 " f. T. 31,841
 25 " g. Ex. 3371, T. 31,840-1
 " g. T. 7331-3; Ex. 696, T. 7452

1 Army, while TOJO was Chief of Staff, entitled "General
 2 Outline of Administration, a Guide to the Establishment
 3 of a new China",^{a.} in which it was said: "We shall
 4 respect the wishes and conventions of the native
 5 people exclusively, (meaning Chinese), and make them
 6 contribute to the preparation for the fast approaching
 7 war with Soviet Russia."^{b.} This indicates that the
 8 Chinese were to be coerced and forced to take part
 9 in the preparation for a war, whether they wanted to
 10 or not, thus arrogating to Japan, the control over a
 11 people who had a sovereignty of their own.

12 XX-7. TOJO knew or should have known of
 13 these plans to wage war, as he was a participant in
 14 the measures adopted to carry them out, while Chief
 15 of Staff of the Kwantung Army, and later as Vice
 16 War Minister and War Minister.

17 (c) TOJO's responsibility for acceleration
 18 of war program while Vice War Minister.
 19

20 XX-8. From May 30, 1938, to July 22, 1940,
 21 on which date TOJO became War Minister,^{a.} TOJO held
 22 many important positions closely connected with the
 23 acceleration of Japan's preparation for war on a vast
 24 scale. On May 30, 1938 he became Vice War Minister,

25 XX-6. a. Ex. 762, T. 36,753
 " b. T. 36,753-4
 XX-8. a. T. 795

a position he held until December 30, 1938.^{b.} On 3
 1 June 1938, he became Chairman of the Army Munitions
 2 Council;^{c.} on June 11, 1938, he became Japan's
 3 representative on the Japan-Manchukuoan Joint Economic
 4 Committee;^{d.} on June 13, 1938, he became a member of
 5 the Central Air Defense Committee;^{e.} on June 15, 1938,
 6 he became a member and Councillor of the Planning
 7 Board;^{f.} on June 18, 1938, he became Chief of the
 8 Army Air Headquarters;^{g.} on December 10, 1938, he
 9 became Inspector General of the Army Air Forces;^{h.}
 10 and on February 24, 1940, he became Temporary Supreme
 11 War Councillor.^{i.}
 12

13 XX-9. Nine months after the outbreak of
 14 the Marco Polo Incident, TOJO was appointed Vice War
 15 Minister, by KONOYE, after UMEZU demanded such
 16 appointment as a condition for the Army's consent to
 17 the selection of ITAGAKI as War Minister.^{a.}
 18

19 XX-10. During TOJO's incumbency as Vice
 20 War Minister, while ITAGAKI was War Minister, the
 21 following major events took place in Japan having
 22 as their objective the consolidation of Japan's economic

23 XX-8. b. T. 30,253
 " c. T. 793
 24 " d. T. 793
 " e. T. 793
 25 " f. T. 793
 " g. T. 793
 " h. T. 794
 " i. T. 794

XX-9. a. T. 30,094

1 and military strength, for the purpose of achieving
2 world power by military force:

3 (a) compulsory military training was
4 introduced in Japanese schools, aimed at inspiring
5 a militaristic and ultra-nationalistic spirit in
6 the students;^{a.}

7 (b) plans for national mobilization for
8 military purposes were put in operation with great
9 energy throughout the Japanese economy;^{b.}

10 (c) a closer alliance with Germany was
11 urged;^{c.} as well as discontinuance of participation
12 in the international enterprises carried out through
13 the League of Nations except Japan's mandatory rule
14 of the South Seas Islands;^{d.}

15 (d) the Five Ministers' Conferences of
16 31 October 1938 provided in detail for Japanese
17 supervision of military affairs, foreign relations,
18 economic matters, religion and education in China.^{e.}

19 XX-11. By reason of TOJO's concurrent
20 position of Chairman of the Army Munitions Council
21 during this particular period of regimentation for
22 war;^{a.} and also his concurrent position as member

23 XX-10. a. T. 1102-3
24 " b. T. 8373; 8301; 8303; 8306,7; 8312; 8339-50;
25 " c. T. 6056-71
" d. T. 3642
" e. Ex. 3739, T. 37,315

XX-11. a. T. 793

1 and Councillor of the Planning Board, ^{b.} whose purpose
2 it was to make the universal plans for the economy
3 of Japan according to the policies decided upon, ^{c.}
4 he must be held responsible for the planning of
5 aggressive war. As Vice Minister of War he should
6 be considered responsible for the undeclared war
7 against the USSR and the Mongolian People's Republic
8 in the Nomanghan area in 1939. Later, while Premier
9 he stated that Japan aimed at the seizure of Soviet
10 territory up to Lake Baikal. ^{d.}

11 III. TOJO'S RELATION TO UNLAWFUL AERIAL
12 BOMBARDMENT IN CHINA.

13 XX-12. Inasmuch as TOJO was Chief of the
14 Army Air Headquarters for a period of time from
15 June 18, 1938, and Inspector General of Army Air
16 Forces from December 10, 1938 to 22 July 1940, he is
17 chargeable with knowledge of, and responsibility for
18 the "lengthening list of instances in which, as a
19 result of air raids by the Japanese forces, American
20 properties, although clearly marked and the location
21 thereof previously reported with accompanying maps to
22

23 XX-11. b. T. 793
24 " c. T. 8612
25 " d. Ex. 3858, T. 38,423-4

1 the Japanese authorities," had been damaged and in
 2 some cases destroyed.^{a.}

3 XX-13. The matter of unlawful aerial
 4 bombardment had been brought to the attention of Japan
 5 time and again.^{a.}

6 XX-14. In his affidavit,^{a.} TOJO failed to
 7 comment on these appalling events, which were a prelude
 8 to more heinous crimes, and it may be assumed therefore
 9 that he did nothing as Inspector General of the Army
 10 Air Forces to stop these unlawful bombardments, by
 11 way of recommendation, or that he even took the
 12 occasion to investigate the same. From this lack of
 13 showing it may be inferred that TOJO condoned the
 14 illegal actions of the Air Forces, and in doing so
 15 he became a party thereto by ratification, waiver, or
 16 consent.
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20 XX-12. a. Ex. 985, T. 9560-2

21 XX-13. a. Ex. 988, T. 9568; Ex. 969, T. 9497-9;
 22 Ex. 971, T. 9503-4; Ex. 974, T. 9537;
 23 Ex. 975, T. 9538-9; Ex. 976, T. 9540-1;
 24 Ex. 980, T. 9554-5; Ex. 988, T. 9568-71

25 XX-14. a. Ex. 3566, T. 36,171

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IV. TOJO'S CONNECTION WITH THE FALL

OF THE YONAI CABINET.

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XX-15. The YONAI Cabinet fell on 21 July 1940. TOJO testified that the fall of the Cabinet resulted from its inability to dispose of matters swiftly in view of the "complex and changing international situation and the equally difficult and changing domestic situation."^{a.} He said he believed the temporary fall of France shortly before, had its effect on the Far East,^{b.} and he testified that it appeared as if the United States was about to enter the war.^{c.} He would not admit that the General Staff of the Army was the cause of the downfall of the Cabinet,^{d.} although he admitted that "outwardly" this may be regarded as the cause, and he said that the failure of the YONAI Cabinet to take advantage of the turn of events in the European war was only a "one sided" reason for its fall.^{e.}

XX-16. HATA, one of the accused, then War Minister,^{a.} informally proposed TOJO as his successor to the Emperor, in a procedure regarded by the Emperor as over-hasty and "out of order," as Prince

XX-15.

- a. T. 36578.
b. T. 36578.
c. T. 36579.
d. T. 36581.
e. T. 36582.

XX-16.

- a. T. 36602.

1 KONOYE was still in the midst of forming a Cabinet
2 and had not yet accepted TOJO for the post.^{b.} Whether
3 the procedure surrounding HATA's recommendation of
4 TOJO was regular or irregular, the record shows that
5 HATA, who recommended TOJO, for the all-important
6 position of War Minister, caused the downfall of
7 the YONAI Cabinet, by reason of his view that a "new
8 structure from a very broad point of view" might be
9 promoted and so that Japan would not "idly" lose an
10 "opportunity which may never come again."^{c.}

11 XX-17. Six days after HATA's demand for
12 the resignation of the YONAI Cabinet, TOJO was sitting
13 with KONOYE, MATSUOKA, and YOSHIDA, planning rapproche-
14 ment with the Axis Powers,^{a.} and twelve days later,
15 as a member of the second KONOYE Cabinet, he partici-
16 pated in the formation and promulgation of the
17 Outline of Japan's Basic National Policy^{b.} and "Gist
18 of Main Points in regard to dealing with the situa-
19 tion to meet the change in World Conditions,"^{c.} which
20 will be seen, cast the die for Japan to accomplish
21 her subsequent movements by force in collaboration
22 with the Axis aggressionists.
23

24 XX-16.

25 b. T. 36603-4.
c. T. 28939-40.

XX-17.

a. Ex. 537, T. 6261.
b. T. 36182.
c. Ex. 1310, T. 11794.

V. TOJO'S ACTS WHILE WAR MINISTER IN
THE KONOYE CABINET.

XX-18. During TOJO's period of service as War Minister in the KONOYE Cabinet, from 22 July 1940 to 18 October 1941,^a he had a position of "political responsibility."^b During his incumbency the following national policies were decided upon, namely (1) An Outline of the Basic National Policy^c which was a Cabinet decision dated 26 July 1940;^d (2) Gist of main points in regard to dealing with the situation to meet the change in world conditions^e which was a Liaison Conference decision dated 27 July 1940; (3) The Tri-Partite Pact which was signed on 27 September 1940,^f after its approval by the Four Ministers' Conference,^g the Imperial Conference,^h the Privy Councilⁱ and the Cabinet;^j (4) Decisions of the Imperial Conference of 13 November 1940 outlining a solution of the China Incident;^k (5) An outline of policies toward French Indo-China and Thailand^l dated 30 January 1941.

XX-18.

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| a. T. 795. | g. T. 36189. |
| b. T. 36176. | h. T. 36191. |
| c. Ex. 541, T. 6271;
Ex. 1297, T. 11714. | i. T. 36192. |
| d. T. 36182. | j. T. 36195. |
| e. Ex. 1310, T. 11794. | k. T. 36206. |
| f. T. 36194. | l. Ex. 3658, T. 36231. |

1 XX-19. These policies and measures, com-
2 mitted Japan to rely on military power as a means of
3 securing her aims, and caused her to drift steadily
4 toward regimentation of her whole national life,
5 centering in the military, in addition to aligning
6 her to Germany and Italy, whose disgraceful actions
7 in respect to people of peaceful neighboring countries
8 had already made them outlaws, and a stench in the
9 nostrils of law-abiding nations.

10 (a) General Features of the National Policy.

11 XX-20. TOJO said that the objective of the
12 Outline of Basic National Policies and the Gist of
13 Main Points, contemplated the settlement of the China
14 Incident and the avoidance of war with America and
15 Britain, while preserving the sovereignty and self-
16 existence of Japan.^a He said that it was the fore-
17 most aspiration of the new Cabinet "in which he was
18 War Minister, to establish an enduring peace and a
19 higher degree of prosperity in the Far East, and that
20 such policies did not contemplate in the slightest
21 degree territorial ambitions and economic monopoly."^b
22

23 XX-21. TOJO asserted that he believed
24 Japanese-American relations should be improved, and

25 XX-20.

a. T. 36182.
b. T. 36182.

1 he proposed doing this by "Japan taking a resolute
2 position,"^a although he explained on cross-examination
3 that by this he only meant that Japan should not take
4 a servile position in the diplomatic negotiations.
5 TOJO's approach to this difficult problem is highly
6 reminiscent of his recommendation to UMEZU in 1937,
7 that Japan should give the Nanking Regime a heavy blow,
8 in order to secure peaceful relations with China. It
9 was that sort of procedure which brought on the China
10 war, then still unsettled, after three years. At the
11 same time, with full knowledge of the damage already
12 done to Japan by the China Incident, he again recom-
13 mended a similar attitude toward the United States,
14 well knowing that war between the United States and
15 Japan would be suicidal, and every effort should be
16 made to prevent it.^b

17 XX-22. TOJO testified that he believed Japan
18 could extricate herself from world isolation by joining
19 hands with Germany and Italy,^a well knowing that
20 Germany and Italy were at war with Great Britain, and
21 that by aligning Japan with Britain's enemies, Japan
22 would eventually be drawn into the war.^b

24 XX-21.

25 a. T. 36186.
b. T. 36186.

XX-22.

a. T. 36185.
b. T. 36188; 36645.

(b) Renovation of Internal Affairs.

1
2 XX-23. TOJO testified that the basic national
3 policy comprehended a renovation of the internal
4 administration so as to "permit of the demonstration
5 of the highest potentialities and powers of the
6 nation";^{a.} a renovation of the educational system so
7 as to supplant the emphasis on materialism by
8 spiritual values,^{b.} and to save the students from a
9 tidal wave of communism;^{c.} a reformation of the Diet
10 so that it would represent the will of the people of
11 Japan;^{d.} and the establishment of a block economy
12 with Japan, Manchukuo and China acting autonomously^{e.}
13 so as to collaborate against the economic blocs in
14 other parts of the world.^{f.} Included in such bloc
15 with Japan were to be French Indo-China, Thailand,
16 the Netherlands East Indies,^{g.} and the Malayas.^{h.}
17

18 XX-24. On the surface, some of these recom-
19 mendations seem harmless but fitted into the scheme
20 of Japan's program, they lose the aura of beneficence,
21 and assume as was really intended, military signifi-
22 cance. The renovation of the internal administration
23 was aimed at securing unquestioned obedience of all the

24 XX-23.

25 a. T. 36628.
b. T. 36629.
c. T. 36631.
d. T. 36632.

e. T. 36635.
f. T. 36636.
g. T. 36637-8.
h. T. 36639.

1 people so that war aims could be carried out. To
2 accomplish this, all political parties were abolished
3 and replaced by the Imperial Rule Assistance Associa-
4 tion, in which all Japanese were members and assisted
5 in the various functions of the Government.^{a.} The
6 plan and aim of this organization was against the
7 spirit of the Constitution and contrary to the
8 structure of the State and the will of the Emperor^{b.}
9 because it created a super-political machine, which
10 was dominated by the top leaders who, thus in effect,
11 became dictators. State Minister KONOYE explained
12 this in a statement before the Budget Committee on
13 8 February 1941 where he said: "This movement
14 sprung up out of the necessity of establishing a
15 strong national defense organization of the state. . .
16 It is a truly totalitarian national movement . . .
17 organized for the purpose of pushing forward such a
18 national movement."^{c.}
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25 XX-24.

- a. T. 17742.
- b. Ex. 3172, T. 28545.
- c. Ex. 2362, T. 18132.

1 XX-25. Thus, it is seen that national reno-
2 vation of the internal administration only meant the
3 regimentation of all the people in one organization,
4 to carry out the orders of the top fascist dictators.

5 XX-26. Likewise, renovation of the educa-
6 tional system was not aimed at supplanting materialism
7 by spiritual values, as is claimed by TOJO, but in
8 reality was adding materialism to materialism by incul-
9 cating in students ultra-nationalism, blind devotion
10 to authority, belief in Japan's ambition of being
11 dominant in Asia, belief in Japan's superiority and
12 divine mission and belief in the necessity of military
13 aggression, if necessary, to accomplish that mission.^{a.}
14 To realize these strictly material objectives there
15 were perceptible increases in the amount of time devoted
16 in schools in Japan to conditioning marches and maneuvers
17 which included maneuvers in open terrain, street fight-
18 ing, bayonet drill and the firing of weapons.^{b.} Further-
19 more, students were taught that war was productive
20 and that Japan's destiny was to rule the Far East and
21 then the world and that the nation's progress required
22 the students to be prepared for war.^{c.} The mere state-
23 ment of what was done to "spiritualize" the educational
24

25 XX-26. a. T. 830-6
 b. T. 826
 c. Ex. 130, T. 943

1 system shows that the reverse of what is now claimed
2 was accomplished by the renovation of the same.

3 (c) Establishment of Bloc Economy.

4 YY-27. The aim of establishing a bloc economy
5 with various Far Eastern countries was but a blind for
6 securing necessary war materials with which to build
7 up Japan's war potential. Having already secured con-
8 trol of Manchukuo through inner guidance and a vast
9 organization of advisors^{a.} and being in possession of
10 most of China, Japan now sought southward expansion,
11 having greedy eyes on the "treasure-house" in that
12 vicinity where there was said to be 200 times as much
13 coal, gold, silver, iron and petroleum as in all of
14 China.^{b.} To secure these treasures, Japan not only
15 wanted to bring French Indo-China and the Netherlands
16 into a peaceful economic bloc, as is asserted, but
17 plans were made to use military force, if necessary,
18 to secure domination of the southern regions. TOJO knew
19 or should have known of this, as it was discussed by
20 the army, navy, and Foreign Offices on 12 and 16 July
21 1940, six days before he became War Minister.^{c.} He
22 also knew or should have known that during the period
23 February to June 1940 while the Japanese Foreign Office
24

25 YY-27. a. Ex. 3378, T. 32357-72
b. Ex. 2215, T. 15819
c. Ex. 527-8, T. 11,699

1 was piously asserting that it entertained no territorial
2 ambitions in the East Indies and any suspicion that it
3 intended to proceed against the East Indies was un-
4 founded,^{d.} the Japanese Foreign Minister refused to
5 agree with a United States proposal on 27 June 1940 to
6 maintain the status quo in the Pacific, on the ground
7 that it would "be inadvisable at this time to have
8 Japan's activities including those in the Netherlands,
9 restricted."^{e.} It was also during the early part of
10 1940 that Japan made demands on the Netherlands East
11 Indies for virtually unrestricted economic privileges^{f.}
12 and at the same time was sounding out Germany as to its
13 attitude in regard to a movement south.^{g.}

14 YY-28. In view of such hostile actions toward
15 sovereign powers in the South Pacific, all the talk
16 about the establishment of a bloc economy, intimating
17 such economic bloc was to be by mutual agreement and
18 for mutual advantage, is wide of the mark and not
19 sustained by the evidence in the case. The real pur-
20 pose of the bloc was to bring the southern countries
21 within Japan's economic sphere so that she could secure
22 the much needed basic raw materials which had to be
23 obtained from new sources following the cessation of
24

25 YY-27. d. Ex. 1014, T. 11,685-6
e. Ex. 1295, T. 11,708-9
f. Ex. 1309-A, T. 11780-2
g. Ex. 517-9, T. 11698-9

supplies from the United States. This is borne out
1 by a Cabinet decision of 3 March 1940 in which it was
2 decided to adopt an economic policy in connection
3 with diplomacy toward the United States, whereby Japan
4 would be freed from reliance on the United States as
5 soon as possible for such materials as scrap iron,
6 petroleum, electrolytic copper, molybdenum, and vanad-
7 ium.
8

9 NY-29. In sum and substance, the proposed
10 economic bloc was only a scheme devised by Japan to
11 secure raw materials urgently needed by her, and to
12 implement this she proposed to use force ultimately,
13 if necessary, unless she could get what she wanted
14 through threats and coercion. The methods used and the
15 false cloaking of the plan under the garb of an economic
16 movement and the ends used to accomplish the same stamp
17 this project as a violation of the Nine Power Pact.

18 THE PRESIDENT: We will recess for fifteen
19 minutes.

20 (Whereupon, at 1045, a recess was
21 taken until 1100, after which the proceedings
22 were resumed as follows:)

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24 NY-28. a. Ex. 1007, T. 9635-42
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. FIVEL: (Reading Continued)

4 (d) Demands on Netherlands East Indies.

5 XX-30. While TOJO was War Minister in the
6 KONOYE Cabinet, efforts were made by Japan to bring
7 the drastic demands against the East Indies to fruition.
8 These demands were made in the middle of August 1940,^a
9 and contemplated the entry of Japanese nationals into
10 the Dutch East Indies, and infiltration into enterprises
11 and investments by Japanese nationals in the East
12 Indies for the development and utilization of its
13 resources. In addition, Japan demanded that the
14 Dutch East Indies cut off relations with Europe and
15 become a member of the East Asia Co-Prosperity Sphere,
16 and that Japanese be afforded the same treatment as
17 citizens of the Netherlands Indies in the Dutch Indies.^b

18 XX-31. A casual examination of the demands
19 which were made indicate that they fairly bristle
20 with the threat of force. That they caused more than
21 slight uneasiness on the part of the East Indies and
22 its friends is not too difficult to understand. They
23 were such that no self-respecting sovereign entity would
24

25 XX-30

a. Ev. 1311, T. 11708-802; T. 11804-7
b. T. 11811-2

1 comply with, namely, to surrender its lands; its
2 properties, its indicia of autonomy, as demanded,
3 without being forced to do so by military might.
4 Incidentally, the real meaning of Japan's East Asia
5 Co-Prosperity Sphere and the proposed economic bloc
6 also becomes clearly delineated when viewed through
7 the conditions for membership sought to be imposed
8 on the Netherlands East Indies.

9 XX-32. While this prelude to war was being
10 enacted, TOJO was War Minister, and had a definite
11 responsibility for bringing matters to such an impasse.
12 His responsibility is in no wise diminished on the
13 theory advanced, that Japan required raw materials
14 and required collaborators. Such a vacuous reason
15 could never be admitted as an excuse for taking away
16 the property or rights of another nation by force
17 and intimidation.

18 (e) The Tri-Partite Pact.

19 XX-33. The Tri-Partite Pact was another item
20 which TOJO said fell under the "Outline of the Basic
21 National Policy", and "Gist of Main Points", which
22 specified the strengthening of political ties with
23 Germany and Italy.^a

24 XX-33

25 a. T. 11795; 36189

1 TOJO viewed the pact as a means of extricating Japan
2 from world isolation and "place her in an impregnable
3 position."^b He made perfectly clear in his testimony
4 that there had been considerable discussion concerning
5 such a Pact before it was presented officially to the
6 Cabinet, and that he attended the Liaison and Imperial
7 Conferences on 19 September 1940 at which an agreement
8 based on the decision reached at the Four Ministers'
9 Conference of 4 September was confirmed, approving a
10 Pact.^c Thereafter, the Imperial Conference likewise
11 approved, followed by the Privy Council and Cabinet
12 taking similar action.

13 XX-34. TOJO said that it was his "sincere
14 belief that the purpose of the treaty was to improve
15 the international position of Japan and therefore would
16 operate as a factor in the solution of the China
17 Incident, as well as in preventing the spread of
18 the European war to East Asia."^a He said the treaty
19 was considered as a means of defending the country
20 against the onslaughts of the "have" nations (thus
21 echoing Hitler's lies), and to aid in finding a way
22

23 XY-33

b. m. 36185

c. m. 36190

24 YY-34

a. m. 36194

1 to survive under the prevailing international situation,
2 He said the reference in the Pact to Japan's position
3 of leadership meant that Japan was a "trail blazer"
4 or a "guide" and that it did not mean that she was to
5 dominate or subjugate any other country, and that the
6 members of Greater East Asia held each others' terri-
7 torial integrity and sovereignty inviolable.^b When
8 making this bland statement he must have had a slight
9 lapse of memory in connection with the attempted
10 "rape" of the Netherlands East Indies in August 1940,
11 as a condition of it becoming an equal member of this
12 Prosperity Sphere.

13 XY-35. It is interesting to note that at the
14 meeting of the Investigation Committee of the Privy
15 Council and Cabinet when the Tri-Partite Pact was under
16 consideration, discussion was had centering around a
17 probable war in which Japan would be involved if the
18 Pact were adopted. Some of those present seemed to feel
19 that the proposed Alliance would bring on a war with the
20 United States.^a In view of this, TOJO, as War Minister,
21 was asked about petroleum reserves. In answering, TOJO
22 stated that the Army had a sufficient supply of oil on
23

24 XY-34

b. T. 36195

25 XY-35

a. Ex. 552, T. 6350-90; 36645

hand to cover operations for some time to come^b and he
1 also said that he felt no concern in respect to the
2 number of personnel "since the manpower needed" by the
3 Army in "the war against America will be comparatively
4 small in number."^c On cross-examination he vaguely
5 remembered that such a matter may have been brought up,
6 but he recalled no details of this all important subject.^d
7 The mention of these matters illustrates the point that
8 TOJO as a responsible official of Japan, knew that in
9 doing so he was embarking Japan upon a new military
10 adventure. This is the only logical conclusion to be
11 deduced from the discussions as to Japan's military
12 reserves in connection with adoption of the Pact.
13

14 XY-36. The impression that TOJO seeks to
15 leave in connection with the Tri-Partite Pact is that
16 HATSUOKA virtually threw the Pact unexpectedly at the
17 government officials and that they were required to
18 consider the matter hurriedly without too much time
19 to spare. This is deduced from TOJO's testimony
20 which is to the effect that "HATSUOKA was in complete
21 charge of all negotiations leading up to the signing
22 of the Treaty;^a that he (TOJO) only knew in a general

23 XX-35

24 b. T. 6365
c. T. 6367
d. T. 36646

25 YX-36

a. T. 36188

1 way what it was all about,^b and that his participation
2 was merely in his capacity as War Minister. This state-
3 ment is only partially true, as the record shows that
4 as early as 20 July 1940, just prior to the time TOJO
5 became War Minister, Woermann cabled the German Foreign
6 Office concerning a meeting of KONOYE, MATSUOKA, TOJO
7 and YOSHIDA, which concerned the drawing up of an
8 authoritative foreign policy program, including
9 rapprochement with the Axis Powers.^c Other telegrams
10 thereafter, spelled out the hope of the Four Ministers
11 (including TOJO) for Japanese-German friendship and
12 cooperation,^d and even a supplication that Germany
13 might scatter about a few crumbs for Japan in the
14 "new apportionment of the world."^e To say the least,
15 the Pact could not have come as a great surprise to TOJO
16 as he himself was an instigator thereof, no doubt
17 desiring to climb on the bandwagon of Germany, after
18 Hitler's sweeping victories over prostrate France and
19 blitzed London. That is unquestionably why TOJO asserted
20 in his affidavit that the Pact would put Japan in "an
21 impregnable position."^f His testimony, on cross-examina-

23 XY-36

24 b. T. 36544

c. Ex. 537, T. 6261

d. Ex. 542, T. 6277

e. Ex. 543, T. 6282

f. T. 36185

1 ation, that he had not made up his mind on an alliance
2 with Germany on 26 July 1940, when the outline of
3 Japan's basic national policy was decided,^f is
4 completely refuted by his participation in the meeting
5 prior to that date at which rapprochement with Germany
6 was decided upon, as above set forth.

7 XX-37. TOJO cannot now claim, however, he was
8 not warned of the utter foolishness of collaborating
9 with Hitler and Mussolini, because ISHII warned all
10 of the conferees, prior to action by the Privy Council
11 in the Tri-Partite Pact, that Hitler was a "character
12 of no little danger," who considered alliances
13 "expedient" and to be broken when occasion demands,^a
14 and that "Germany and Italy should not be trusted too
15 much" because the "national character of Germany is
16 such as would suck the blood of others."^b

17 XX-38. Despite such warnings, the Pact was
18 put through on the grounds of expediency^a and what
19 proved to be a stumbling block in the Japanese-United
20 States negotiations came into force 27 September 1940,
21 with TOJO's full approval. Such approval was given
22 despite the fact that TOJO knew the general plan of

23 XX-36 g. Ex. 541, T. 36585

24 XX-37 a. T. 6387

25 b. T. 6388

XX-38 a. T. 6388

1 Hitler's "new order";^b and knew that Germany had invaded
2 Holland;^c and knew that Hitler had marched into
3 Austria and Czechoslovakia;^d and knew of the invasion
4 of Norway;^e and knew about the persecution of the Jews.^f
5 None of these matters, however, seemed to cause much
6 disturbance to TOJO's mental processes. Answering the
7 question whether he thought Hitler's action in invading
8 various countries was aggression, he testified that
9 Hitler's actions would have to be judged by history.^g
10 In this vague and irresponsible manner, he became a
11 bedfellow of the German crowd of lawbreakers and
12 murderers, thereby rejecting the friendship of the
13 United States and Britain.

14 (f) Stationing Troops in North
15 French Indo-China.

16 XX-39. TOJO considered that under the "Gist
17 of Main Points in regard to dealing with the situation
18 to meet the changes in world conditions," mentioned
19 above, one means of solving the China Incident was to
20 sever the coalition between Chungking and America and
21 Britain. To bring this about, the Supreme Command
22 urgently requested the dispatch of Japanese forces to

23 XX-38

24 b. T. 36545
25 c. T. 36548
d. T. 36548-9
e. T. 36549
f. T. 36550
g. T. 36549

1 Northern French Indo-China to prohibit passage of
2 supplies through French Indo-China to the Chiang
3 regime.^a Therefore, toward the end of September 1940,
4 while War Minister in the KONOYE Cabinet, TOJO and the
5 Supreme Command, arranged the stationing of troops in
6 northern French Indo-China.^b Although an agreement
7 for this action was arranged between MATSUOKA and Henry
8 (for Vichy France)^c authorizing the stationing of
9 Japanese troops in a specified area,^d in order to
10 cut the Chiang line of supplies, the real purpose of
11 Japan's movement is found in a Cabinet decision of
12 3 September 1940,^e under which Japan secured virtual
13 control of Indo-China's economy.^f

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22 XY-39

- 23 a. T. 36198
24 b. T. 36197
c. T. 36200
25 d. T. 36200
e. Ex. 3688, T. 36709
f. T. 36710; 36716, 36718

1 XX-40. On 16 April 1941, the Army and Navy
2 Imperial Headquarters established a policy that it
3 intended to occupy bases in the southern part of
4 French Indo-China "needed for a military advance
5 into the Netherlands Indies;"^a and on 6 May 1941,
6 treaties of residence, navigation, and customs were
7 concluded between Japan and French Indo-China, giving
8 Japanese nationals equal rights with nationals of that
9 country.^b

10 XX-41. Thus, while TOJO was War minister
11 the pattern of aggression gradually unfolded. Under
12 the cloak of providing protection, mutual advantage,
13 and preservation of sovereign rights, Japan demon-
14 strated its real intentions of dominating lesser en-
15 tities by threats or actual force. The real purpose
16 of entry into Indo-China was fraudulent, as the
17 underlying intent was to secure a foothold for sub-
18 sequent domination and exploitation, and to use it
19 as a springboard for an attack on the Netherlands
20 East Indies.^a

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22 VI. TOJO'S VIEWS ON THE NINE POWER TREATY
23 AND WAR IN GENERAL.

24 XX-40. a. T. 11,753
25 b. T. 7140; 7159

 XX-41. a. T. 11,755

1 XX-42. On cross-examination, TOJO gave his
2 views on the subject of whether war was a crime, and
3 also on the Nine Power Treaty. As to the latter, he
4 asserted that since the Nine Power Treaty had come
5 into effect, changes had taken place in East Asia;^a
6 the China Incident had broken out; the world economic
7 situation had changed from that of free trade to one
8 of bloc economy; and the fact that the Soviet Union
9 was not a signatory to the Pact had a grave bearing
10 both on the position of Japan and that of China.^b He
11 said the reason Japan did not request the interested
12 nations to hold a conference to consider modification
13 of the Treaty, was because Japan felt that the main
14 signatories to the Pact showed a hostile attitude
15 toward Japan, and that the situation presented many
16 difficult problems.^c Certainly, none of the matters
17 mentioned justified the unilateral action taken by
18 Japan, which in effect committed the Nine Power
19 Treaty and others of a similar nature to the waste-
20 basket. The real view of TOJO on the sanctity of
21 treaties is found in a statement made by him before
22 an Investigation Committee of the Privy Council on
23

24 XX-42. a. T. 36,793
25 b. T. 36,794
 c. T. 36,795

18 August 1943, ^d where he said: "International law should be interpreted from the viewpoint of executing the war according to our own opinions."

XX-43. While this statement was made by TOJO after the Pacific war had broken out, it nevertheless reflects his attitude that International Law and International Agreements have no sanctity and may be nullified unilaterally solely on the grounds of expediency, when they impede the aspirations, desires or views of one of the parties.

XX-44. As for TOJO's views on war, he said ^a that he did not agree that war was a crime, but he did agree that wars have an unfortunate effect upon the people, and that the effect is the same for the victor or the vanquished.

XX-45. The views of TOJO on the inviolability of treaties make his views on wars understandable.

VII. THE U. S. - JAPANESE NEGOTIATIONS.

(a) TOJO's part in the resolution adopted by the Imperial Conference on 2 July 1941.

XX-46. TOJO was War Minister in the second KONOYE Cabinets from 22 July 1940 to 16 July 1941 and

XX-42. d. Ex. 1275, T. 11,367

XX-44. a. T. 36,569

1 from that date to October 1941 in the third KONOYE
2 Cabinet.^a During this period, especially commencing
3 9 April 1941, negotiations were carried on with a
4 view to adjust Japanese-American relations.^b He, as
5 War Minister, on 30 June 1941, explained to the
6 Supreme War Council the fast changing external con-
7 ditions^c and discussion had between TOJO and KIDO
8 on 28 June 1941, aiming at strengthening the Imperial
9 General Headquarters. Arrangements were made for
10 the Imperial General Headquarters to meet every day
11 in the Palace.^d On 2 July 1941, a resolution was
12 adopted by the Imperial Conference, in which TOJO
13 participated as War Minister,^e defining the policy of
14 the Empire to be to push southward; abide by the Tri-
15 Partite Pact; and carry out his "schemes against
16 French Indo-China and Thailand^f and secretly prepare
17 arms against the Soviet Union." With such aggressive
18 objectives, the KONOYE Cabinet was headed for the
19 shoals.
20

21 XX-46.

- 22 a. T. 795
23 b. Ex. 1059, T. 9851; Ex. 1060, T. 9863;
24 Ex. 1061, T. 9866; Ex. 1070, T. 9891;
25 Ex. 1071, T. 9904; Ex. 1083, T. 9964;
Ex. 1085, T. 9982; Ex. 1092, T. 10,005
c. Ex. 2246, T. 16,173
d. Ex. 1098, T. 10,037
e. Ex. 779
f. Ex. 538, T. 6567-9

1 (b) Rise and fall of the third KONOYE
2 Cabinet.

3 XX-47. The shake-up of the second KONOYE
4 Cabinet effected no changes in major policies. KONOYE
5 who was desirous of concluding the Japanese-U.S.
6 negotiations with success, asked for a personal
7 meeting with President Roosevelt so that frank
8 opinions could be exchanged "on broad lines."^a
9 Opposing this action, TOJO took the view that "the
10 interview was fraught with difficulties from the out-
11 set, and seemed doomed to failure."^b TOJO, in his
12 testimony, omitted to state that he threw cold water
13 on the proposed meeting by telling KONOYE that if
14 such meeting were held, the existing diplomatic rela-
15 tions of the Empire, which were based on the Tri-
16 Partite^c fact, would unavoidably be weakened, and at
17 the same time, a considerable domestic stir would be
18 created. For these reasons, he told KONOYE he did not
19 consider the meeting "a suitable move."^c It is no
20 wonder that in view of the practical veto of the
21 proposal by TOJO, no meeting was consummated, even
22 though the minimum requirements of the United States
23 were of an extremely mild nature.
24

25 XX-47.

a. T. 36,269-70
b. T. 36,270

c. Ex. 2866, T. 25,771
d. T. 36,291; 36,270

1 XX-48. So, notwithstanding KONOYE's desire
2 for peace, TOJO made it clear that Japan had become
3 so bound to the Axis that rather than withdraw from
4 the Tri-Partite Alliance, it would risk a war with
5 the United States. He further refused to concede
6 the withdrawal of troops by Japan from China.^a

7 (c) Imperial Conference Decision of
8 6 September 1941.

9 XX-49. The grave deadlock in the U. S. -
10 Japanese conversations induced the convenin^a of the
11 Imperial Conference on 6 September 1941, at which
12 a plan entitled "Execution of the Empire's Policy,"
13 was adopted, providing for mobilization of manpower,
14 requisitioning of shipping; refitting of vessels; a
15 determination to go to war with the United States
16 and Britain in November 1941, unless the situation
17 could be sooner solved;^b and an operational plan in
18 case of war.^c TOJO in an interrogation^d said that
19 the main question to be decided "was that of war or
20 peace and what attitude should be decided upon in
21 either case." It was also decided to continue negoti-
22 ations with America until the middle "ten days of
23 October" and that "both peace preparations and war
24

25 XX-48. a. T. 36,268

XX-49. a. T. 36,271

b. T. 36,281-2

c. T. 36,283-9

d. Ex. 1136A, T. 10,220

preparations would be pushed.^e

1
2 (d) Resignation of the third KONOYE
3 Cabinet.

4 XX-50. Prior to the resignation of the
5 third KONOYE Cabinet, negotiations with the United
6 States were stalemated and a meeting was held on
7 12 October 1941 at Prince KONOYE's house to discuss
8 the adjustment of diplomatic relations between the
9 United States and Japan. At this meeting TOJO
10 called for "great resolution" since he saw "no hope
11 for arrival at an understanding between Japan and
12 the U.S.A.," and on TOJO's advice it was agreed by
13 those present, namely, the War, Navy and Foreign
14 Ministers and President of the Planning Board, in
15 connection with Japanese-American relations, that
16 Japan should not change its policy of stationing
17 troops in China, or in other policies connected with
18 it, and that Japan should not entertain anything that
19 might affect the result of the China Incident. Hav-
20 ing these points in mind, it was decided that it
21 should be found out whether negotiations could be
22 successful within the time set by the High Command
23 and when that had been ascertained, the matter should
24 be settled through diplomacy and all operational
25

XX-49. e. T. 10,221

and after KONOYE sent KIDO a message that "TOJO
 1 would be better if guarantee of peace is obtained."^e

2 At an ex-Premiers' Conference it was decided on
 3 KIDO's suggestion that TOJO should have the addi-
 4 tional position of War Minister.^f On 18 October
 5 1941, TOJO held the positions of Prime Minister,
 6 Home Minister, War Minister, President of China Af-
 7 fairs Board, and Supreme War Councillor.^g

8
 9 XX-53. In giving his reasons for the fall
 10 of the Third KONOYE Cabinet, TOJO sought to explain
 11 why he adopted his irreconcilable attitude toward
 12 the U. S. negotiations, claiming that while there
 13 was "a slight sign of mutual concession" in the
 14 reply of Secretary Hull on 2 October 1941,^a the Army
 15 General Staff held the view that the Washington
 16 Government was "entirely without any inclination to
 17 give and take;"^b that America had virtually refused
 18 a personal meeting of the responsible chiefs of the
 19 two countries;^c that to continue the conversations
 20 longer would result in Japan being imposed upon by
 21 America's dilatory policy;^d that instantaneous and
 22 entire evacuation in China would produce nothing but

23 XX-52.

24 e. T. 10,271
 25 f. Ex. 1154, T. 10,291
 g. Ex. 128, T. 791;
 Ex. 1155, T. 10,293

XX-53.

a. T. 36,297
 b. T. 36,297
 c. T. 36,300
 d. T. 36,301

1 Chinese contempt and a China Incident III would be
2 the result; and that loss of prestige would be
3 keenly felt in Manchuria and Korea.^e

4 XX-54. TOJO summed up his reasons for the
5 resignation of the Third KONOYE Cabinet as follows:^a
6 (1) "Measures had not proceeded as yet to a point in
7 the American-Japanese negotiations to enable us to
8 ascertain whether or not there was a hope of settling
9 the matters diplomatically." (2) "Determination of
10 the Navy to go to war was uncertain." In previous
11 testimony on interrogation, 11 February 1946, he
12 stated that the theoretical reason for the fall of
13 the KONOYE Cabinet on 17 October 1941, was because
14 he, (TOJO) favored war with the United States. He
15 also on that occasion said the following: "at that
16 time I felt, as War Minister, that the opportune time
17 for fighting was in danger of being lost and the
18 Imperial Conferences had set the middle ten days of
19 October as the limit for waiting for a favorable
20 diplomatic break."^b

22 XX-55. It seems that TOJO's reasons for the
23 fall of the Third KONOYE Cabinet after he accomplished

24 XX-53. e. T. 36,301-2

25 XX-54. a. T. 36,307
b. Ex. 1153A, T. 10,290

1 its fall were entirely different than while he was
2 bringing the fall about. While the structure was
3 toppling, he took the arbitrary view that Japan could
4 not make "one concession" in so far as withdrawing
5 troops was concerned.^a The insistence by TOJO on
6 this unbending attitude and the position he took
7 favoring war with the United States is what broke the
8 KONOYE Cabinet and made TOJO Premier.

9 (e) Further U. S. negotiations under TOJO,
10 before Pearl Harbor.

11 XX-56. When TOJO took up the reins dropped
12 by KONOYE he received instructions from the Emperor
13 to study "in broad and deep bases the situation at
14 home and abroad, without being particular about the
15 decision reached in the Imperial Conference on Sep-
16 tember 6." This was what was subsequently known as
17 the "back to blank paper" or "clean slate message of
18 the Emperor."^a

19 XX-57. TOJO testified he felt that this was
20 an imperative direction of the Emperor and he "firmly
21 resolved that it must be accomplished without fail."^a
22 However, he was hardly seated as Premier, charged
23 with this all-important mandate by the Emperor, when
24

25 XX-55. a. T. 10,262
XX-56. a. T. 36,309
XX-57. a. T. 36,311

1 events took place which stamp his utterances and
2 resolves with insincerity, and show that no bona fide
3 effort was made by him to wipe the slate clean and
4 make firm efforts to achieve peace in the Pacific.

5 XX-58. TOJO testified,^a that after the
6 formation of his Cabinet, the Government, with the
7 cooperation of the Supreme Command, immediately went
8 into deliberations which were mainly concerned with
9 national strength, foreign affairs and military mat-
10 ters, except strategic problems.^b That such state-
11 ment is not true is readily seen from typical matters
12 considered by the Liaison Conference prior to 5
13 November 1941, when plans A and B were agreed upon
14 by the Imperial Conference.

15 XX-59. At the Liaison Conferences, which
16 were supposedly held to consider non-strategic prob-
17 lems, the following strictly strategic problems were
18 considered at meetings held on or about 30 October
19 1941: (1) The degree of cooperation to be expected
20 from Germany and Italy in case of the outbreak of war
21 against Britain, America and the Netherlands; (2)
22 whether Japan could expect Germany and Italy to begin
23 war by intensifying the attack on American vessels
24

25 XX-58.

a. T. 36,316
b. T. 36,316

1 and warships in the Atlantic, thereby diverting
2 America in its landing operations on the British
3 mainland;^a (3) help expected from Germany and Italy
4 by the advance of German and Italian forces to the
5 Near East, Central Asia and India;^b (4) Germany's
6 intensified attack upon Britain after she had con-
7 solidated her occupied areas and established a new
8 order in Europe;^c (5) whether Japan's opponents
9 could be restricted to the Netherlands or to Britain
10 and the Netherlands in case of Japan's southward ad-
11 vance;^d (6) German winter operations toward Africa,
12 the near East and Central Asia;^e and danger in giving
13 the opponents time for preparation.^f

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22 XX-59.

- 23 a. T. 11,929
24 b. T. 11,930
c. T. 11,930
25 d. T. 11,931
e. T. 11,934-5
f. T. 11,934-5

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1 XX-60. At the same time every emphasis was
2 being laid on, and strict attention paid to, the view
3 of the Supreme Command that from a strategic as well
4 as a meteorological aspect, November was the most
5 suitable period for operations, although requisite
6 operations could be carried out in December even though
7 difficulty of landing operations would increase.^{a.}

8 XX-61. In view of the intense study given
9 by the Liaison Conference to strategic situations and
10 problems from 17 October 1941 to 5 November 1941, it is
11 ridiculous for TOJO now to claim that he and his asso-
12 ciates were re-examining the United States-Japanese
13 dispute apart from the implications and movements inci-
14 dent to the outbreak of hostilities. All through TOJO's
15 affidavit covering this period^{a.} there are such phrases
16 as "determination to go to war . . . in the event of
17 failure of those negotiations;"^{b.} "operational prepara-
18 tions shall be commenced;"^{c.} "the most important problem
19 of all was the procurement of liquid fuel;"^{d.} "to halt
20 the major part of military production was something
21 that the Army and Navy, engaged in the China Incident,
22 could not countenance. Therefore, to adopt a policy of
23 patience and perseverance under such impediments was
24

25 (XX-60. a. T. 36322)

(XX-61. a. T. 36316-329

b. T. 36317

c. T. 36317

d. T. 36319)

tantamount to the self-annihilation of our nation;"^{e.}

1 "rather than await extinction, it were better to face
2 death by breaking through the encircling ring and
3 find a way for existence."^{f.}
4

5 XX-62. Some of the above statements are
6 reminiscent of Hitler's exhortations, used to invoke
7 the sympathy of those ignorant of his real ambitions.
8 The talk of encirclement is entirely borrowed from
9 Hitler. The timetable for commencement of war within
10 practically one month after TOJO assumed office shows
11 that TOJO did not and could not have examined the
12 United States-Japanese negotiations from a "clean slate"
13 basis. The fact is no change in the situation was
14 made except a deadline was set for the surrender of
15 the United States of America, to TOJO's insensate
16 desire for more and more control over sovereign na-
17 tions in the Pacific. Therefore his actions preceding
18 5 November 1941 call for no sympathy. He, in fact,
19 violated a solemn trust imposed upon him by the Em-
20 peror, when he was invested with the highest government
21 position in the Empire, by knuckling down to the Supreme
22 Command, and by superimposing his views over and above
23 the welfare of eighty million Japanese.
24

25 (XX-61. e. T. 36321
f. T. 36321)

VIII. TOJO's Responsibility for the Decisions
of 5 November 1941, and the Commencement
of War

(a) The decisions of 5 November 1941.

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XX-63. The Liaison Conferences which were held from the time TOJO became Premier until 5 November 1941, when the Imperial Conference decided the policy toward the United States, England and the Netherlands, consumed only 47 days, and as has been shown, discussion centered primarily on Japan's ability to carry on a war, rather than settling outstanding issues peacefully. The theorem adopted was that war was the only alternative. Thus, although the Emperor directed that the problem be considered on a "clean slate" basis, the pattern pursued was exactly the same as was followed prior to TOJO's selection as Premier. TOJO himself admitted in his interrogation of 12 March 1946^a that when he undertook the work as Premier, he followed the policy of 6 September. To say the least, this was not starting with a "clean slate." Nor could any substantial results in the negotiations be expected, since the Premier who was ordered to disregard the 6 September decision, adopted that decision in its most important points, namely that war had to be the (XX-63. a. Ex. 1158-B, T. 10308)

1 alternative, and that a deadline for the commencement
2 of war had to be set. Thus, TOJO, as the top man in
3 the administration guided the action taken which shortly
4 led to war. His actions fix his responsibility in this
5 connection.

6 XX-64. The Imperial Conference on 5 November
7 1941 approved the "A" and "B" plans for submission to
8 the United States. The "A" plan^{a.} was first to be pre-
9 sented and the "B" plan^{b.} was to be used as a last
10 resort.^{c.}

11 XX-65. TOJO's claim on cross-examination that
12 Japan was endeavoring to settle matters diplomatically
13 with the "United States, and that Plans 'A' and 'B'
14 were in fact not Japan's last word,^{a.} but were only
15 transmitted in appearance as final proposals as a
16 'diplomatic step,' and were in the nature of 'horse
17 trading' and 'bargaining,'"^{b.} is so contrary to the terms
18 of the instruments and contrary to instructions issued
19 in connection therewith and communications in reference
20 thereto, that it deserves little credence. For instance,
21 TOGO advised NOMURA as early as 2 November 1941 that
22 the final decision to be reached on 5 November "will
23

24 (XX-64. a. T. 10324-6
25 b. T. 10343-4
c. T. 36348)
(XX-65. a. T. 36702
b. T. 36699)

1 be our government's last effort to improve diplomatic
2 relations";^{c.} on 4 November Tokyo wired Washington
3 that the counter-proposal to be sanctioned on 5 Nov-
4 ember "is our last effort." "Both in name and spirit
5 this counter-proposal of ours is, indeed, the last . . .
6 This time we are making our last possible bargain."^{d.}
7 In transmitting the proposal TOGO told NOMURA that
8 proposal B was the "absolutely final proposal"^{e.} and
9 the government's final step^{f.} and in talking to the
10 British Ambassador on 11 November 1941 TOGO told him
11 that the Imperial Government had already submitted its
12 final proposal to the United States.^{g.}

13 XX-66. The claim of TOJO now that Japan was
14 in a conciliatory mood after 5 November 1941, and was
15 honestly and sincerely endeavoring to negotiate through
16 diplomatic agencies, and had not said the final word,
17 is contrary to the written evidence before the Tribunal.
18

19 (b) Delivery of Japan's Final Note.

20 XX-67. In answer to Secretary's Hull's note
21 of 26 November 1941 Japan sent its final note to the
22 United States indicating that negotiations for settle-
23 ment of pending issues was no longer possible. This

24 (XX-65. c. Ex. 1163, T. 10316
25 d. Ex. 1164, T. 10318-21
e. Ex. 1170, T. 10344
f. T. 10345
g. Ex. 1174, T. 10354)

1 note was approved by the Cabinet, but the final text
2 was the responsibility of TOJO and TOGO.^{a.} At the Im-
3 perial Conference of 30 November 1941 the Emperor
4 repeatedly asked that they make certain that the note
5 be delivered before the outbreak of hostilities.^{b.}
6 This is the note which was delivered on 7 December
7 1941 while Pearl Harbor was being attacked. Conclu-
8 sive proof that TOJO had made up his mind to carry
9 out the plans for war in the Pacific is his reaction
10 to the last minute appeal by President Roosevelt to
11 the Emperor, where this urgent, personal, and last
12 minute effort was made by President Roosevelt to stop
13 the impending struggle. TOJO when advised of this mes-
14 sage expressed the view that it was too late to make
15 any changes in the plans. This of course is entirely
16 contradictory of the position taken by the responsible
17 defendants that orders to the fleet at Pearl Harbor
18 could be countermanded at any time prior to the time
19 set for attack.
20

21 XX-68. TOJO testified on interrogations that
22 by reason of the final note Japan felt she was free to
23 act; that responsibility in connection with delivery
24 of the note was with the Foreign Minister; but that

25 (XX-67. a. Ex. 1202-A, T. 10482
b. Ex. 1201-A, T. 10480)

1 he and the Cabinet all studied the question, and had
2 concluded there was nothing in any treaty or inter-
3 national law which would preclude an attack by Japan
4 on the United States and Britain after delivery of the
5 note.^{a.} Furthermore, TOJO said he had studied the
6 Hague Convention, and the Kellogg-Briand Pact, and con-
7 cluded that Japan was not bound by them because she
8 was acting in self-defense.^{b.}

9 XX-69. Despite the fact that the Japanese
10 final note had been agreed to long before 6 December
11 it was only on that day that TOGO advised NOMURA that
12 the Japanese Government would reply to Hull's note of
13 November 26. He also advised NOMURA that the reply
14 might be delayed until 7 December, and the exact time
15 for presenting the same would be telegraphed later.^{a.}
16 He cautioned NOMURA to keep the memorandum strictly
17 confidential by "absolutely avoiding the use of typists,
18 etc., in its preparations."^{b.} Finally TOGO telegraphed
19 NOMURA to present Japan's reply to the Secretary of
20 State, if possible, at 1 p.m. on the 7th of December.^{c.}

21
22 XX-70. As the Japanese reply was set for
23 delivery approximately at the time the Pearl Harbor

24 (XX-68. a. Ex. 1204-A, T. 10492
b. Ex. 1205-A, T. 10501)
25 (XX-69. a. Ex. 1216, T. 10534
b. Ex. 1217, T. 10536
c. Ex. 1218, T. 10537)

1 attack occurred, the plan to carry out such an under-
2 taking without due notice failed to conform to estab-
3 lished international procedures pertaining to the com-
4 mencement of hostilities, and violated international
5 treaties, agreements and assurances to which Japan was
6 a party signatory.

7 XX-71. In an interrogation,^{a.} TOJO admitted
8 that he was the one primarily responsible for the at-
9 tack on Pearl Harbor and the United States and British
10 possessions, but he said that the Cabinet was jointly
11 responsible, and as Senior Member he was the one
12 "chiefly responsible."^{b.} He maintained that the Army
13 Chief of Staff and the Navy Chief of Staff also bore
14 responsibility.^{c.} TOJO also admitted he knew of the
15 attacks at Malaya, Hongkong and the Philippines,^{d.} and
16 he approved them all.^{e.}

17 XX-72. After these attacks had been made,
18 and in a panicky effort to formalize the events which
19 had occurred, an Imperial Rescript was issued by Japan
20 on 8 December 1941, declaring war on the United States
21 and the British Empire.^{a.}

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23 (XX-71. a. Ex. 1243-A, T. 10705
24 b. T. 10706
25 c. T. 10706
 d. T. 10707
 e. Ex. 1243-A, T. 10708)

(XX-72. a. Ex. 1240, T. 10706-88)

IX. TOJO and the Greater East Asia Co-Prosperity
Sphere.

1
2 XX-73. TOJO admitted that one of the remote
3 causes of Japan's war with the United States was inter-
4 ference with Japan's plans for a Greater East Asia.^{a.}
5 He said that the establishment of the East Asia sphere
6 was one of the nation's ideals and it was desired to
7 establish such sphere "by peaceful means."^{b.} In fact,
8 one of the main reasons in directing the war was stated
9 by TOJO in a speech before the 79th session of the Diet
10 on 22 January 1942 to be not only to secure strategic
11 points in Greater East Asia and to bring areas con-
12 taining important resources under Japan's control,^{c.} but
13 to establish the Greater East Asia Co-Prosperity
14 Sphere. He said that the purpose of establishing this
15 sphere came "from the great spirit of Japanese founda-
16 tion" and that the new order would be based "on
17 morality."^{d.} Later, in the same talk, TOJO forgot
18 for the moment the spiritual and moral motives activa-
19 ting Japan in this great undertaking and explained
20 what was really in the mind of those who sponsored
21 this enterprise. He said: "In constructing this
22
23

24 (X-73. a. T. 36567
25 b. T. 36537
c. Ex. 1338-B, T. 12035
d. T. 12036)

(meaning the sphere) we have a mind to bring under
1 our power those areas which are absolutely indispen-
2 sable for the defense of Greater East Asia and to
3 deal with the others properly in accordance with tra-
4 ditions and culture of every race, and the changes of
5 war situations."^{e.}

6 XX-74. At the same session of the Diet referred
7 to above, TOGO also spoke and confirmed the predatory
8 ambitions of Japan in connection with the East Asia
9 sphere. He said that the aim of the war was the es-
10 tablishment of the Greater East Asia Co-Prosperity
11 Sphere, and "it is natural that the areas absolutely
12 necessary for the defense of East Asia must be grasped
13 by Japan."^{a.} Putting the views of TOJO and TOGO to-
14 gether, it becomes apparent that the real nature of the
15 Greater East Asia Co-Prosperity Sphere was to bring
16 the countries to the south under the power and control
17 of Japan and then exploit them.

18 XX-75. It is perfectly clear that this so-
19 called spiritual and moral undertaking was at best a
20 cover for the seizure and control by Japan of the
21 valuable sovereign lands to the south, and such control
22 was to be secured by force if necessary.
23

24 (XX-73. e. T. 12037-8)

25 (XX-74. a. T. 12031-2)

1 XX-76. The plans for creation of a vast
2 number of tributary nations became the real reason
3 why Japan embarked on the war rather than the alleged
4 reason that she was obliged to fight in self-defense.

5 XX-77. TOJO accepted the concept of seizure
6 by force of such sovereign countries and territories
7 as would contribute important resources to Japan. All
8 the fatuous talk about co-prosperity and friendly econ-
9 omic and cultural relations is ridiculous when viewed
10 through the speeches he made in which he expressly
11 said that such areas as were needed would be brought
12 under Japan's control. His speeches in this behalf
13 portray him as a military aggressor.

14 XX-78. Therefore, although in his testimony
15 he says that the object of the policy "was swiftly to
16 establish the stability of the Far East"^{a.} and that
17 it aimed merely at "economic cooperation" between
18 neighboring countries,^{b.} which aims were pursued by
19 "peaceful methods"^{c.} his earlier observations, made
20 while the policy was being put into effect, completely
21 refute the beneficent framework with which he now seeks
22 to surround the project, and his subsequent acts are at
23 odds with the effort now made to stamp this project as

24 (XX-78. a. T. 36426
25 b. T. 36427
c. T. 36428)

1 idealistic.^{d.} For instance, in order to show how
2 nicely the "sphere" worked under Japan's guidance,
3 TOJO cites the Burma-Japan alliance of 1 August 1943^{e.}
4 in which Japan "promised to assign to Burma part of the
5 Japanese occupied territory with which the people of
6 Burma had had a close racial association." This indeed
7 would appear to be generous of Japan were it not that
8 she was passing over to Burma someone else's property
9 and not her own. Next, TOJO cites that the Japanese
10 Government recognized the independence of the Philip-
11 pines.^{f.} TOJO says that he himself went to the Philip-
12 pines in May 1942 and observed the spirit of the people
13 and assisted them in promoting the plan for establishing
14 an independent nation.^{g.} He fails to show, however,
15 that Japan was at that time in military occupation
16 of the islands and that Japan's dealings necessarily
17 were with those friendly to Japan and not with the rank
18 and file of Filipinos whose property had been destroyed
19 and whose countrymen had been murdered or otherwise mis-
20 treated by the invading Japanese armies. He also cites
21 the treaty of "friendship" between Japan and Thailand
22 and the protocol which guaranteed reciprocal cooperation
23

24 (XX-78. d. T. 36429

e. Ex. 3674, T. 36450

25 f. T. 36456

g. T. 36456

1 in "friendly relations and intimate economic relations,"^{h.}
2 but he fails to mention that while he was War Minister,
3 on 21 November 1940, the second Four Ministers' Confer-
4 ence decided to help Thailand gain control of Probang
5 and Pakuse, provided Thailand agreed to Japanese de-
6 mands,^{i.} namely, that Thailand furnish rice and other
7 important raw materials to Japan, and to separate from
8 Britain. In the same agreement it appears that Japan
9 used the Thailand situation as a means of stimulating
10 the French Indo-China problem by playing off Thailand
11 against Indo-China, thus killing two birds with one
12 stone.^{j.} In addition, in return for the concessions
13 made to Japan the treaty provided that Japan would re-
14 turn to Thailand the four Malayan provinces of Perulis,
15 Kedah, Kerantan and Trengganu out of the former Siamese
16 territory of Malay, and the two Shan provinces of Ken-
17 tung and Monpang then under occupation by Japanese
18 troops.^{k.}
19
20
21
22

23 (XX-78. h. T. 36456
24 i. Ex. 618-A, T. 6873
25 j. Ex. 618-A, p. 15
k. Ex. 3681, T. 36458)

1 XX-79. TOJO's explanation that his under-
2 standing was that the parceling out of the territory
3 of a sovereign nation between two major powers, was
4 according to international law, and that the treaty
5 between Japan and Thailand was concluded at a time when
6 war was going on, lacks justification legally or other-
7 wise for the action which was taken.

8 X. TOJO's responsibility as to Prisoners of
9 War and Civilian Internees.

10 (a) Extent of TOJO's assumption of responsibility

11 XX-80. TOJO in his testimony assumes respon-
12 sibility for the following (1) treatment of prisoners
13 of war after internment at Detention Camps established
14 by the Ministry of War, or the treatment of civilian
15 internees interned in the war zones, except for China.
16 This includes war prisoners employed in the construction
17 of the Burma-Siamese Railway. As to this classification
18 he assumes administrative responsibility as Minister of
19 War for the period from the beginning of the Pacific
20 War up to 22 July 1944.^{a.} (2) He assumes administrative
21 responsibility incumbent on the Supreme Command as
22 Chief of the General Staff, from February 1944 to July
23 1944.^{b.} Under this category are included such cases as
24 (XX-80. a. T. 36413, Ex. 1980A, T. 14558.
25 b. T. 36413.)

1 involved the treatment of prisoners of war during the
2 period of their transportation to prisoner of war camps
3 established by the Minister of War, and also included
4 the occurrences which took place on the Malay Peninsula,
5 and on the Bataan Peninsula.^{c.} (3) He also assumes
6 administrative responsibility as Minister of Foreign
7 Affairs in connection with protests of foreign countries,
8 or through the International Red Cross during the period
9 1 September to 17 September 1942.^{d.} (4) He also
10 assumes administrative responsibility, as Minister of
11 Home Affairs, from 8 December 1941 to 17 February 1942,
12 in relation to treatment of civilian internees in Japan
13 proper.^{e.} He also assumes political responsibility
14 as Prime Minister and concurrently as War Minister for
15 matters relating to the promulgation of the POW punish-
16 ment law.^{f.}

17 (b) Procedures adopted as War Minister.

18 XX-81. As War Minister, he says he gave
19 orders prohibiting maltreatment and imposition of
20 forced labor on prisoners of war or civilian internees
21 or inhabitants in occupied territories,^{a.} and directed
22 they be treated with humanity according to the principles
23

24 (XX-80. c. T. 36412 (XX-81. a. ix. 1965, T.36414)
25 d. T. 36413-4
e. T. 36414
f. T. 36414)

of international law and regulations.^{b.} He asserted
1 that War Minister instructions were issued directing
2 the behavior of all army officers, soldiers and civilian
3 employees of the Army at the front.^{c.} He explained
4 that in March 1943 the disciplinary law for prisoners
5 of war was amended.^{d.} This amendment became necessary,
6 he said, for the reason that the existing law was
7 enacted at the time of the Russo-Japanese war, and
8 conditions prevailing in World War II were vastly
9 different from those in former wars, namely, in the
10 complexity of racial differences among prisoners of war,
11 the variations in their nationalities, and particularly
12 the number of prisoners of war involved. The changes
13 made, however, were not in TOJO's opinion, in conflict
14 with the Geneva Protocol.^{e.} They related mainly to
15 crimes of violence, insubordination against prisoners
16 of war supervisors, the crime of escape, mass conspiracy,
17 breach of parole, assault and intimidation, formation
18 of bands for the purpose of killing, wounding, in-
19 timidating, insulting or insubordination against
20 prisoners of war supervisors.^{f.}

22 XX-82. It is to be noted that TOJO's actions

23
24 (XX-81. b. T. 36415
c. T. 36415
25 d. T. 36417
e. T. 36418
f. T. 36418)

1 did not fit his words. While TOJO was War Minister,
 2 on 1 March 1942, a telegram was directed to the Vice
 3 War Minister from the Chief of Staff, Korean Army,
 4 requesting the internment of 1,000 British and 1,000
 5 American prisoners of war in Korea "as it would be
 6 very effective in stamping out the respect and admira-
 7 tion of the Korean people for Britain and America...."^{c.}

8 This request was approved by the Minister of War
 9 (TOJO).^{b.} Later, these prisoners on arrival were
 10 "exposed to public show"^{c.} and were transported through
 11 Fusan, Seoul and Jensen along roads lined by about
 12 120,000 Koreans and 57,000 Japanese bystanders.^{d.}

13 XX-83. British prisoners of war in Rangoon
 14 in July 1942 were also degraded, being forced to clean
 15 the city streets, thus needlessly hurting the dignity
 16 of soldier prisoners, contrary to the prisoners of war
 17 code.^{a.}

18 XX-84. As for TOJO's claim that he gave
 19 orders prohibiting forced labor by prisoners of war,
 20 this seems to be contrary to his instructions of
 21 30 May 1942,^{c.} delivered to the Commander of the
 22 Zentsuji Division, in which he said; "The present
 23

24 (XX-82. a. Ex. 1973, T. 14512

b. T. 14512

c. T. 14526

d. T. 14522)

(XX-83. a. Ex. 2022, T. 14754)

(XX-84. a. Ex. 1960, T. 14423)

1 situation of affairs in this country does not permit
2 anyone to be idle doing nothing but eating freely.
3 With that in view, in dealing with the prisoners of
4 war, I hope you will see that they may be usefully
5 employed." Again on 25 June 1942, in an address
6 delivered to the newly appointed chiefs of prisoners
7 of war camps, TOJO said that the labor and technical
8 skill of prisoners must be fully utilized for the
9 replenishment of production, and contribution rendered
10 toward the prosecution of the Greater East Asiatic
11 War." ^{b.} On 7 July 1942, TOJO issued instructions to
12 the newly-appointed commanders of prisoner of war camps,
13 in line with what he had told them in his oral address.
14 The instructions included the following: "not let them
15 remain idle even for a single day," also "supervise them
16 rigidly;" also "utilize most effectively their manpower
17 and technical abilities." ^{c.} This was followed in
18 October 1942 with a decision providing that labor may
19 be imposed on officers and non-coms although the same
20 is prohibited under Article 1 of prisoner of war Labor
21 regulations (Army Note No. 139, September 10, 1904). ^{d.}

22 In the same month, the War Minister (TOJO) approved an

23 (YX-84. b. Ex. 1962, T. 14426-7

24 c. Ex. 1963, T. 14429

25 d. Lx. 1961, T. 14425)

1 application of the General Staff of the Eastern District
2 Army, to permit prisoners of war to work in various
3 ports and other places, loading and unloading cargo,
4 constructing canals, and in munition factories for
5 "expanding production."^{e.}

6 XX-85. In an interrogation on 25 March 1946,
7 TOJO admitted that he was aware of the fact that the
8 United States and Britain had warned Japan that it
9 would be held responsible for violations of the conven-
10 tions and rules of war. He said the only complaints
11 coming to him about treatment of prisoners of war were
12 in connection with food. Atrocities he said were not
13 brought to his notice at all.^{e.} He admitted that if
14 these atrocities were true, treaties had been violated.^{b.}
15 He admitted that complaints by the United States and
16 Great Britain were taken up at the bi-weekly meeting
17 of the Prisoners Bureau.^{c.} He, himself, upon hearing
18 of rumors of mistreatment of prisoners of war at Bataan,
19 in the course of a trip to the Philippines, inquired
20 of the Chief of Staff, WACHI, who informed him that the
21 Bataan "march" was due to lack of transportation and
22 there were no cases of atrocities.^{d.} This inquiry was

23 (XX-84. e. Ex. 1967, T. 14484-8)

24 (XX-85. a. Ex. 1980C, T. 14562

25 b. T. 14563

c. T. 14565

d. Ex. 1980E, T. 14566)

made on 5 May 1943 whereas the "Bataan March" took
place early in 1942.^{e.}

XX-86. In an interrogation on 26 March 1946,
TOJO said, that since the end of the war, he read
about the inhumane acts committed by the Japanese
Army and Navy personnel. He said that such acts were
not the intention of those in authority. He said "we
did not even suspect that such things had happened. . .
such acts are not permissible in Japan . . . the
character of the Japanese people is such that they
believe that neither Heaven nor Earth would permit
such things."^{e.}

XX-87. If such were the beliefs of TOJO
after the events had taken place, the evidence shows
that he did not hold such views when the atrocities
were taking place. He must have known that prisoners
of war were being treated illegally because complaints
on such matters were under consideration at bi-weekly
meetings of the Prisoners' Bureau, as he admitted.^{a.}
He is not absolved from actual responsibility merely
because he would forward a protest to the responsible
Army Command when it came in, and then "presume" that
investigations were made;^{b.} nor is he absolved from

(XX-85. e. T. 14566)

(XX-86. a. Ex. 1981A, T. 14575-6)

(XX-87. a. T. 14565

b. Ex. 1981B, T. 14579)

1 actual responsibility by assuming that the Commander
2 in the field would take measures and send a report back
3 to the War Minister.^{c.} TOJO's failure to properly check
4 the rumors and complaints is demonstrated by his failure
5 while there to discuss with the Chief of Staff of the
6 Army in the Philippines, various rumors of the suffer-
7 ing that prisoners experienced during the "Bataan
8 March."^{d.} He admitted that he did not talk to the
9 Chief of Staff of the protest of the United States
10 Government to Japan, that the prisoners, on that march,
11 were beaten, bayoneted and shot. He said he did not
12 talk about those things because he thought that if the
13 responsible army commander knew about those things he
14 would take appropriate measures if things were contrary
15 to international law.^{e.} Nor did he inquire whether any
16 action whatsoever had been taken in these matters.^{f.}

17
18 XX-88. The reason assigned by him for his
19 failure to make inquiries to ascertain whether the
20 complaints made by the United States were justified
21 was that the "responsible commander had the authority,"
22 and he "relied upon him."^{a.} It is submitted that the
23 duty of a War Minister and concurrently a Prime Minister

24 (XX-87. c. Ex. 1983B, T. 14597

25 d. T. 14585

e. T. 14587

f. T. 14587)

(XX-88. a. T. 14587)

1 extends beyond reliance on a presumption that some
2 other official is doing his duty especially where a
3 determination must be made whether formal protests from
4 another nation are justified or not. The explanations
5 made by TOJO of his actions show either condonance of
6 the illegal treatment of prisoners of war, or a failure
7 to understand his responsibilities, which imposed on
8 him overall supervision of the actions of his sub-
9 ordinates.

10 (c) Regulations for punishment of enemy
11 fliers.

12 XX-89. TOJO testified that penalties for
13 those violating wartime laws and regulations during an
14 air-raid, were provided for in a Vice War Minister's
15 communication in July 1942 following the invasion of
16 the Tokyo area by the Doolittle fliers on 18 April
17 1942.^{a.} He said that it was concluded that all such
18 cases should go to trial to determine whether or not
19 particular acts constituted violations of international
20 law or regulations.^{b.} He testified that this became
21 necessary to prevent atrocities by aerial bombardment
22 in the future, as well as to prevent rigorous treatment
23 to plane crews by troops on the spot out of hatred for

24 (XX-89. a. T. 36419
25 b. T. 36419)

c.
 1 them. It is his claim that the Doolittle fliers
 2 were all tried by a court established in Shanghai
 3 and while eight were sentenced to death he secured the
 4 commutation of the death penalty of five of the
 5 prisoners.
 6 d.

7 XX-90. TOJO was unable to state whether the
 8 order to impose severe punishment on the fliers was
 9 issued over his name or by Imperial Headquarters, but
 10 he said "no matter who issued it, I am responsible for
 11 it." f. The only connection the Emperor had with the
 12 matter was that, after sentence of the eight fliers to
 13 death, TOJO discussed the matter with him and recom-
 14 mended that the Emperor commute the death penalties
 15 from eight to three, it being "decided that only the
 16 three who had killed primary school students would
 17 receive the death penalty."
 18 b.

19 YX-91. In explanation of the action taken to
 20 establish a procedure for trial of fliers who raided
 21 Japan, he said in an interrogatory of 29 March 1946,
 22 that the raid of 18 October 1942 was not against troops,
 23 but against non-combatants, primary school students,
 24 and so forth, and that is why trials were ordered.
 25 b.

(XX-89. c. T. 36419 (XX-91. a. Ex. 1984A, T.14599-604
 24 d. T. 36420) b. T. 14600)
 (XX-90. e. T. 14602
 25 b. T. 14602-3)

1 He said that the bombing was a great shock to the public,
2 and "feeling ran very high."^{c.} This theory, that the
3 Doolittle fliers knowingly or intentionally engaged
4 in indiscriminate aerial bombardment of non-combatants
5 and school children, was shown in this trial to have
6 been based on certain confessions extracted from some
7 of the fliers, after they were subjected to cruel and
8 inhumane torture, this branding the confessions as
9 having no probative value.^{d.}

10 THE PRESIDENT: We will recess until half
11 past one.

12 (Whereupon, at 1200, a recess was
13 taken.)
14
15
16
17
18
19
20
21
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23
24

25 (XY-91. c. T. 14601
d. IX. 3834A, T. 38030)

1 AFTERNOON SESSION

2
3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Colonel Fixel.

8 MR. FIXEL: (Reading)

9 (d) Atrocities in Connection with Construction
10 of the Thailand-Burma Railway.

11 XX-92. TOJO admitted in his testimony that
12 he agreed to the employment of prisoners of war in con-
13 nection with work on the Burma-Thai railway. He says
14 that the railway route lay at a great distance behind the
15 front lines and that there were no military operations
16 in progress in that area at the time, and that the
17 district was not an uncommonly unhealthy one for that
18 area.^{a.} It was his assertion that Japanese soldiers were
19 employed side by side with the prisoners of war and that
20 the latter were treated equally with men of other and
21 stronger nationalities, and that there "was not ever
22 the faintest thought in our minds that this type of
23 employment would even be challenged as prohibitive under
24 international standards."^{b.} He said that in May 1943,
25

(XX-92. a. T. 36,421.
b. T. 36,422.)

1 when he was informed of deficiencies in sanitary
2 conditions and treatment of prisoners of war engaged
3 in the work, he dispatched General HAMADA, Chief of
4 the Prisoners of War Control Section, and a number of
5 expert surgeons there from the Medical Bureau, and
6 subsequently a company commander who had dealt unfairly
7 with the prisoners was court-martialed, and the
8 Commanding General, Railway Construction, was relieved
9 from duty.^{c.}

10 XX-93. In an interrogation, 25 March 1946,^{a.}
11 TOJO admitted that he and his assistants had made
12 investigations many times in connection with mistreat-
13 ment of prisoners of war on the Burma-Thai Railway.

14 XX-94. WAKAMATSU, a witness, testified that
15 he had made an inspection of the Burma-Siam area
16 around July or August 1943,^{a.} and reported the results
17 to the Chief of Staff, General SUGIYAMA, and the Vice-
18 Chief of Staff, General HATA, (not a defendant in this
19 case). This inspection was made because reports had
20 been received that "the physical condition of the
21 prisoners of war was poor, and that the death rate was
22 very high." He also heard that cholera was epidemic.
23 During the course of his inspection he observed many
24

25 (XX-92. c. T. 36422.
XX-93. a. Ex. 1930-E, T. 14565.
XX-94. a. Ex. 1989, T. 14633-6.)

cases of dysentery and beri-beri among the prisoners
 1 of war. He also found that the feeding "was not satis-
 2 factory, the quantity and quality being below the
 3 required standard." ^{b.} He said that "many deaths of
 4 prisoners of war resulted from the building of this
 5 road." There were not enough trucks and the truck roads
 6 had been washed out. Therefore, more men were used to
 7 make up for a deficiency in trucks. ^{c.}

9 XX-95. Other evidence shows that no hospitali-
 10 zation was provided the sick; ^{a.} no anesthetics or
 11 instruments were provided for operations; ^{b.} the prisoners
 12 of war lived in indescribably filthy conditions; ^{c.} that
 13 they suffered an average loss of weight from 70 to 80
 14 pounds; ^{d.} and that Australian mortality was 44% and
 15 British deaths were 59% among the POW. ^{e.}

16 (c) Widespread Atrocities During TOJO's
 17 Regime.

18 XX-96. It would serve no useful purpose to
 19 enumerate the widespread acts of brutal, inhuman and
 20 atrocious conduct by Japanese troops during the time
 21 TOJO was War Minister and Premier. ^{a.} TOJO had more than
 22

23 (XX-94. b. T. 14634. c. T. 14635-6.
 XX-95. a. T. 13064. d. T. 13071.
 24 b. T. 13073. e. T. 13069.
 c. T. 13061-4; 13091-4; 13084-7.
 25 XX-96. a. T. 11539-43; 11583; 13172-5; 13187;
 13193; 13425; 13488; 13510-11; 13515-8;
 13525; 14053; 14057; 14977-15000.)

1 administrative responsibility as he acknowledges. He
2 had actual and direct responsibility, because he per-
3 mitted such things to continue to happen after he knew
4 or should have known what was being done.

5 XI. TOJO's Guilt Under the Counts of the
6 Indictment.

7 XX-97. The facts which establish TOJO's guilt
8 under the respective counts may be found as indicated:

9 Counts 1-5 - in par. II.

10 Counts 6-17 - in par. IV, V, VI, VII, VIII, IX.

11 Counts 18-26 - in par. IV, V, VI, VII, VIII, IX.

12 Counts 27-36 - in par. IV, V, VI, VII, VIII, IX.

13 Counts 37-43 - in par. X.

14 Counts 48-52 - in par. II (B) (C), III.

15 Counts 53-54 - in par. X.

16 With the permission of the Court, Colonel
17 Ivanov will continue for the prosecution.

18 THE PRESIDENT: Colonel Ivanov.

19 COLONEL IVANOV: If the Tribunal please, I
20 shall now read the summation of the case against the
21 accused UMEZU, Yoshijiro.

22 UMEZU, Yoshijiro.

23 YY-1. Charges against UMEZU, Yoshijiro are
24 contained in the following counts of the Indictment:
25 1-19; 26-32; 34; 36; 44-51; 53-55.

1. Biographical Outline.

1 YY-2. UMEZU was born on January 4, 1882. He
2 started his military career in 1904 as a sublieutenant.
3 In 1905 he was promoted to lieutenant and for services
4 in the Russo-Japanese war he was decorated with the
5 5th Class of the Order of the Golden Kite. In the years
6 1908 and 1909 UMEZU was a student of the Military Staff
7 College. During almost all the subsequent years until
8 1928 UMEZU was an officer of the Japanese General Staff.
9 Several times he went overseas. In 1913 he was in
10 Germany. During World War I, from 1915 until 1917
11 he resided in Denmark. In 1919 he made an official
12 tour of Europe and subsequently until 1921 he was
13 Military Attache in Switzerland supervising the activi-
14 ties of Japanese residents. In 1924 he was promoted
15 colonel. In 1926 he was appointed section chief of the
16 General Staff Office and held this office until 1928.
17 Throughout the period of time covered by the Indictment
18 UMEZU held responsible positions in the Japanese Army
19 and in the government. From 1928 until August 1930 he
20 held the post of Chief of the Military Affairs Section,
21 Bureau of Military Affairs, War Ministry, whereupon he
22 was promoted to major general and for a year commanded
23 the 1st Infantry Brigade. From 1 August 1931 to
24 1 August 1933, UMEZU held the office of Chief of the
25

1 General Affairs Department of the Army General Staff,
2 and, later, for seven months he was attached to the
3 General Staff Office. From March 1934 until 1 August
4 1935, UMEZU, then a lieutenant general, commanded the
5 Japanese Army stationed in China, whereupon he was a
6 divisional commander in Japan proper until March 1936.
7 From 23 March 1936, through 30 May 1938, he held the
8 post of Vice-War Minister in three cabinets. During
9 the same period of time UMEZU concurrently held the
10 positions of a councilor of the Manchurian Affairs
11 Bureau (cabinet), a member of the National Resources
12 Investigation Council, a member of the Steel Industries
13 Investigation Commission, a member of the Automobile
14 Manufacturing Business Commission, a member of the
15 Liquid Fuels Commission, a member of the Science Research
16 Committee and a member of the Temporary Committee for
17 the Regulation of Funds. He was also Chairman of the
18 Army Munitions Investigation Council, acting Chief of
19 the Army Arsenal, a councilor in the Planning Board and
20 a member of the Cabinet Information Bureau. In 1938
21 he was a member of the Establishing Committee for the
22 North China Development Company and the Central China
23 Development Company. From May 1938 until 7 September
24 1939, he was Commander of the 1st Army in China. From
25 7 September 1939 until 18 July 1944 UMEZU was

1 Commander-in-Chief of the Kwantung Army and Envoy
2 Extraordinary and Ambassador Plenipotentiary in Man-
3 chukuo. In August 1940 he was promoted to general.
4 From 18 July 1944 UMEZU held the post of Chief of the
5 Army General Staff until he signed the Instrument of
6 Surrender on September 2, 1945. UMEZU was decorated
7 with several orders, valuable gifts and other awards.
8 In March, 1936, he was promoted to the 1st Rank of the
9 Higher Civil Service. In September 1943, he was awarded
10 the 3rd Court Rank of the Senior Grade.^{a.}

11 II. The 1st Stage of UMEZU's Activities.

12 YY-3. While holding the post of Chief of the
13 Military Affairs Section, Bureau of Military Affairs,
14 War Ministry (1928-30), UMEZU was in charge of the study
15 of general problems of the so-called "national defense"
16 of Japan, military research and also the ideological
17 preparation of the population for war and military
18 affairs pertaining to Manchuria and China.^{a.} Naturally,
19 these problems were of vital interest to the conspirators
20 and determined UMEZU's active participation in the
21 conspiracy.

22 YY-4. As Chief of the General Affairs Depart-
23 ment of the General Staff (1931-1933) UMEZU was in charge
24 (YY-2. a. Ex. 129, T. 798-803.
25 YY-3. a. Ex. 129; Ex. 74, T. 504; T. 582; T. 583;
T. 15,859.)

of army personnel and organization matters as well
1 as problems of mobilization.^{a.} As the head of one of
2 the most important divisions of the General Staff Office,
3 UMEZU took an active part in ensuring the conduct of
4 military operations for the seizure of Manchuria
5 which were commenced and accomplished during precisely
6 the same period. For services in the "incident"
7 (1931-34) UMEZU was decorated with the Order of the
8 Double Rays of the Rising Sun, and with the 1st Class
9 of the Order of the Sacred Treasure.^{b.}

11 YY-5. In 1932 while UMEZU was Chief of the
12 General Affairs Department, the Japanese General Staff
13 adopted the decision to accomplish war preparations
14 against the U.S.S.R. by the beginning of 1934.^{a.} As
15 testified by the witness KASAHARA, Yukio, section chiefs
16 of the General Staff discussed this problem at that
17 time and planned to increase Japan's armed forces in
18 order to execute this decision.^{b.} Being in charge of
19 army organization and mobilization problems,^{c.} UMEZU
20 was directly concerned with this stage of the Japanese
21 aggression against the U.S.S.R.
22

23 (YY-4. a. Ex. 78, T. 589.

b. Ex. 129, T. 801.

24 YY-5. a. Ex. 702, T. 7510, 7515.

b. Ex. 129; Ex. 2670; T. 23196; T. 23232.

25 c. Ex. 78, T. 389.)

III. UMEZU's Activities in North China.

1 YY-6. As Commander of the Japanese Army in
2 China with Headquarters in Tientsin (March 1934-August
3 1935) UMEZU concentrated his efforts on the accomplish-
4 ment of the next objects of the conspiracy, to-wit:
5 further extension of Japan's domination in China;
6 separation of China's northern provinces; and the estab-
7 lishment of a pro-Japanese puppet regime in North China.
8 The witness TANAKA, Ryukichi, testified that Commander
9 of the Japanese Army in North China UMEZU, as well as
10 Commander-in-Chief of the Kwantung Army MINAMI, initiated
11 the autonomous movement in North China for the purpose
12 of establishing an "autonomous" regime in Mongolia and
13 other provinces in North China which was virtually tan-
14 tantamount to separation of the five Northern Chinese
15 Provinces (Hopei, Shansi, Shantung, Chahar and Suiyuan)
16 from the Nanking Government in order to place them
17 entirely under Japanese control.^{a.}
18

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25 (YY-6. a. T. 2026, 2027, 2028, 2034, 2035.)

YY-7. In the middle of May 1935, two Chinese
 1 were murdered by unidentified persons in the territory
 2 of a Japanese concession in Tientsin. Taking advan-
 3 tage of this incident, Chief of Staff of the Japanese
 4 forces SAKAI, who was directly responsible to UMEZU,
 5 visited General HO of the Chinese Army and stated that
 6 the Japanese Army regarded these killings as acts
 7 of provocation and, threatening to take drastic
 8 measures, demanded a change in command of the Chinese
 9 forces and the withdrawal of the Chinese police and
 10 local party organizations from Hopei. The Chinese
 11 Nationalist Government substantially satisfied these
 12 demands.^{a.} Nevertheless, on 29 May 1935 UMEZU again
 13 dispatched his Chief of Staff SAKAI, to General HO^b
 14 demanding that the Chinese troops be withdrawn and
 15 anti-Japanese activities be discontinued and threaten-
 16 ing that the Japanese Army would take unrestricted
 17 actions should these demands not be satisfied.^{c.}

YY-8. These demands, made in the form of an
 19 ultimatum were published by the press.^{a.} The press
 20 also carried the news of UMEZU's order for the cancella-
 21 tion of the dispatch of troops to Japan (scheduled for
 22 15 July 1935) in view of a "critical situation"
 23

YY-7. a. Ex. 194, T. 2274-76.

b. Ex. 2491, T. 20786.

c. Ex. 194, T. 2276.

YY-8. a. Ex. 3241, T. 29489; T. 29496, 29504-5, 29531.

existing." ^{b.} In the entry in his diary dated 30 May
 1 1935 the accused KIDO pointed out that demands lodged
 2 against China were very extensive and that China,
 3 according to SHIGEMITSU's estimate, was in no condi-
 4 tion to oppose the claims of the Japanese Army. ^{c.} Thus,
 5 UMEZU, taking advantage of the weakness of China which
 6 was unable to oppose the Japanese demands and being
 7 supported by the threat of the Japanese bayonets,
 8 grossly violated China's sovereignty.
 9

10 YY-9. On 1 June 1935, UMEZU conferred with
 11 War Minister HAYASHI and Commander-in-Chief of the
 12 Kwantung Army MINAMI in Hsinking. ^{a.} It is beyond
 13 any doubt that this conference was devoted to co-
 14 ordination of action in regard to the extension of
 15 Japanese aggression in China and to exerting further
 16 resolute pressure upon the Nationalist Chinese Govern-
 17 ment. On 9 June 1935, upon the conclusion of negotia-
 18 tions with General HO, the press published a statement
 19 made by UMEZU to the effect that Japan's further ac-
 20 tions would depend on the sincerity of the Chinese in
 21 granting the Japanese "requests." ^{b.}
 22

23 YY-10. On 10 June 1935, the ultimatums
 24 lodged against China by Commander of the Japanese

25 YY-8. b. Ex. 2206-A, T. 15778. c. Ex. 2192, T. 15733.
 YY-9. a. Ex. 2206-A, T. 15777; T. 19986, T. 29488-90.
 b. T. 15779.

1 Army in North China UMEZU were satisfied. On this
2 occasion the "Ho-UMEZU Agreement" was concluded pur-
3 suant to which Chinese troops were transferred into
4 other areas, the activities of the local party organiza-
5 tions in Hopei were discontinued and the anti-Japanese
6 movement was banned. The capital of Hopei was trans-
7 ferred to another town.^{a.}

8 YY-11. This was corroborated by the witness
9 John Goette, who testified that the Chinese troops had
10 satisfied the demands of the Japanese military authori-
11 ties who threatened that they would otherwise ship
12 more troops to China and establish a regime of military
13 occupation there.^{a.} Another witness, Ching Te-chun,
14 testified that there was no anti-Japanese movement in
15 North China at that time.^{b.} Consequently, an allusion
16 thereto served merely as a pretext for Japan's aggres-
17 sive actions. Needless to say, even if there had been
18 such a movement, it would have given no right to UMEZU
19 and other Japanese imperialists to intervene in internal
20 affairs of the Chinese sovereign state.
21

22 YY-12. As a result of the "Ho-UMEZU" Agree-
23 ment, Japan established complete control over the
24 provinces of North China. There had been created all

25 YY-10. a. Ex. 194, T. 2276; Ex. 2491, T. 20787.
YY-11. a. T. 3746-48; T. 3809-10-11. b. T. 2480.

1 prerequisites for the establishment of a military
2 base by the Japanese Army in North China for the
3 purpose of invading Central China. In June 1935, a
4 minor incident occurred in Chahar with four Japanese
5 officers. DOHIHARA, who had arrived in Tientsin where
6 UMEZU was Commander of Japanese troops, took advantage
7 of threats and pressure employed by the Japanese Army
8 and on June 27, 1935, concluded an "agreement" with
9 General Chin Te-chun, thereby securing a withdrawal of
10 Chinese troops and the accomplishment of some other
11 measures in Hopei favorable to Japan.^{a.} Subsequently,
12 in November 1935, the Japanese set up an autonomous
13 puppet regime in Eastern Hopei,^{b.} and demanded that
14 independence be granted to the Hopei-Chahar Political
15 Council to reorganize it later into an autonomous
16 government of North China.^{c.}

17 YY-13. In the summer of 1935 during UMEZU's
18 stay in Tientsin, Japanese military aircraft made
19 flights and landings around Peiping and Tientsin.^{a.}
20 As Commander of Japanese troops in North China until
21 August 1935, UMEZU should be held responsible for these
22 violations of China's sovereignty.
23

24 YY-12. a. Ex. 199, T. 2311-17; Ex. 2489, T. 20755.
25 b. Ex. 210, T. 2701-3; Ex. 211, T. 2704.
c. Ex. 199, T. 2315.

YY-13. a. Ex. 213, T. 2708.

IV. UIEZU's Activities in the War Ministry.

1
2 YY-14. During his tenure of office as Vice-
3 War Minister in 1936-38, UIEZU, as well as the staff
4 of his subordinates in the War Ministry, took part in
5 the working out of drafts and in subsequent implementa-
6 tion of the most important decisions of the Japanese
7 Government aimed at the extension of aggression. By
8 30 July 1936 the War and Navy Ministries had worked out
9 the draft of a decision concerning "the Basis of
10 National Policy."^{a.} On the same day, the basic
11 principles of national policy set forth in that
12 document were approved by the Prime Minister, the
13 Foreign Minister, the Navy and War Ministers, and by
14 the Minister of Finance.^{b.}

15 YY-15. On 7 August 1936, the Conference of
16 Five Ministers (including the War Minister) adopted
17 a decision on "The Basic Principle of National Policy"^a
18 and on the same day the Conference of Four Ministers
19 (which also included the War Minister) adopted the
20 resolution entitled "Foreign Policy of the Empire."^{b.}
21

22 YY-16. The resolution entitled "The Basic
23 Principle of National Policy," in particular provided

24 YY-14. a. Ex. 977, T. 9542-7; b. Ex. 978, T. 9548.
25 YY-15. a. Ex. 216, T. 2720; b. Ex. 704, T. 7523, 7878.

1 for war preparations and envisaged expansionist policy
2 against China, the Soviet Union, Great Britain, and
3 the U. S. A.^{a.}

4 YY-17. The resolution entitled "Foreign
5 Policy of the Empire" called for making China anti-
6 Soviet and pro-Japanese and provided for some other
7 hostile steps against the U. S. S. R. as well as for
8 realization of full cooperation between Japan and
9 Germany.^{a.}

10 YY-18. In the same year (1936) Japan's co-
11 operation with Germany and Italy resulted in the con-
12 clusion of the Anti-Comintern Pact,^{a.} an international
13 conspiracy of aggressors directed against freedom-
14 loving nations and, primarily, against the U. S. S. R.
15 As Vice-War Minister, UMEZU took an active part in the
16 conclusion of this pact and took steps to include
17 Manchukuo therein,^{b.} and also to establish a secret
18 air route between Japan and Germany.^{c.} For his personal
19 services in the conclusion of the Anti-Comintern Pact
20 UMEZU was decorated.^{c.}

21 YY-19. After the resignation of Prime Minis-
22 ter HIROTA on 23 January 1937, General UGAKI was
23

24 YY-16. a. Ex. 216, T. 2727-28.

YY-17. a. Ex. 704, T. 7523-4, 7878.

25 YY-18. a. Ex. 36, T. 499. c. Ex. 770, T. 7871.
b. Ex. 242, T. 2997, 3000-1. d. Ex. 129, T. 802.

1 authorized to form a new cabinet. However, the
2 reactionary circles of the Japanese military considered
3 his nomination undesirable in the conditions of 1937
4 and they frustrated the formation of his cabinet. As
5 may be seen from a document of the Japanese Home Minis-
6 try, Vice-War Minister UMEZU stated on 27 January 1937
7 that the army was against UGAKI for reasons not to be
8 disclosed. ^{a.} UMEZU's notice sent to the Ex-Soldiers
9 Organization is the same in effect. ^{b.} The only reason
10 could be that at that moment UGAKI's nomination was
11 considered inadequate from the standpoint of the prose-
12 cution of the aggressive policy of the Japanese
13 imperialism, one of whose agents was UMEZU, a party
14 to the conspiracy. It is characteristic that as a
15 representative of the most reactionary factions of the
16 Japanese military UMEZU invariably remained Vice-War
17 Minister in the cabinets of HIROTA, HAYASHI, and
18 KONOYE (1936-38), which consistently promoted the aims
19 of the aggressive conspiracy.
20

21 YV-20. In the prosecution of the conspiracy
22 the program for the accomplishment of Japan's large-
23 scale preparations for expansionist warfare was of

24 YV-19. a. Ex. 2208-D, T. 15798-800.
25 b. Ex. 2208-E, T. 15800-3.

1 paramount importance.^{a.} As Vice-War Minister UMEZU
2 played an active role in the working out and in the
3 execution of this program. UMEZU's personal partici-
4 pation in the activities of the National Resources
5 Investigation Council, in the Steel Industries Inves-
6 tigation Commission, in the Automobile Manufacturing
7 Business Commission and in the Liquid Fuels Commission
8 helped to put the main Japanese industries on a war
9 footing and ensured military and economic preparations
10 for wars of aggression. As Chairman of the Army
11 Munitions Investigation Council and Chief of the Army

12 Arsenal,^{b.} UMEZU concentrated in his own hands the
13 regulation of all army supplies and, primarily,
14 armaments and ammunition supply.

15 YY-21. The top-secret telegram of Chief of
16 Staff of the Kwantung Army TOJO, dated 9 June 1937,
17 and addressed to UMEZU, contains an analysis of the
18 situation in China from the standpoint of Japanese war
19 preparations against the U. S. S. R. TOJO thought it
20 most advisable to deliver the first blow against the
21 Nanking Government thereby eliminating a menace in
22 the rear of the Kwantung Army.^{a.} The actions taken

23 YY-20.
24 a. Ex. 842, T. 8264-70; Ex. 841, T. 8261-63;
b. Ex. 129, T. 798-803. T. 18312-13.

25 YY-21.
a. Ex. 672, T. 7336-7.

by UEZU pursuant to this program can be easily
 1 determined from facts. It is well known that on
 2 July 7 and 8, 1937, i. e., less than a month after this
 3 telegram, the Japanese troops struck a blow against the
 4 Nanking Government.^{b.} Thereupon, during the year 1937
 5 the Japanese troops seized Nanking, the capital of
 6 China, and occupied the capitals of the following
 7 provinces: Shansi, Chantung, Chahar, Hopei, and Sui-
 8 yuen.^{c.} In 1938 Japan's undeclared aggressive war
 9 against China continued, and the Japanese Army occupied
 10 more Chinese provinces.^{d.}

12 YY-22. As Vice-War Minister, UEZU is
 13 responsible for the preparation and prosecution of the
 14 undeclared aggressive war against China during the
 15 years 1937-38. He was directly concerned with the
 16 mobilization and the dispatch of Japanese troops to
 17 China.^{a.} According to an estimate of the Chinese
 18 Government, the strength of the Japanese Army in
 19 China as of September 1937, amounted to 350,000.
 20 The witness TANAKA admitted that in October 1937
 21 there were 15 Japanese divisions in China.^{b.} The
 22 witness SHIBAYAMA, Kaneshiro, testified that in
 23

24 YY-21. b. Ex. 198, T. 2326-7; Ex. 58, T. 3299-3300.
 c. Ex. 254, T. 3430. c. Ex. 254, T. 3430-32.
 25 YY-22. a. Ex. 2582, T. 21986; Ex. 2488, T. 20678-82;
 Ex. 3260, T. 29690; Ex. 2582, T. 21996.
 b. Ex. 58, T. 3306; Ex. 2488, T. 20685.

1 January 1938, he accompanied Vice-War Minister UMEZU
2 on an inspection tour of the battle lines in North
3 China.^{c.} In the documents of the Japanese Foreign
4 Ministry presented to the Tribunal there is an entry
5 which discloses that early in 1938 following an
6 Imperial conference Vice-War Minister UMEZU went to
7 China to transmit the conference decisions to the
8 commanders of the Japanese occupation forces operating
9 in China.^{d.}

10 YY-23. On 11 October 1937, UMEZU and the
11 staff of his subordinates in the War Ministry pre-
12 pared "Views Concerning the Attitude of the Empire
13 toward Arbitration or Intervention by America,
14 European Powers or the League of Nations in the
15 Sino-Japanese Incident." It was pointed out in
16 these "Views" that Japan would forcibly block any
17 intervention or pressure by third powers until she had
18 achieved her object in her military campaign against
19 China. The document discloses that the War Ministry
20 proposed special measures to be taken in order to
21 avoid any impression that Japan was anxious to bring
22 the incident to a settlement.^{a.} That shows with

24 what persistence UMEZU and other conspirators strove

25 YY-22. a. Ex. 3178, T. 28630. d. Ex. 3269, T. 37245-6.
YY-23. a. Ex. 3268, T. 37237-8.

1 to effectuate their aggressive plans. The decision
2 adopted on this program by the War and Navy Ministries
3 and the Ministry of Foreign Affairs on 22 October
4 1937^{b.} shows that the principles worked out with
5 UMEZU's participation were being translated into
6 reality.

7 YY-24. For his meritorious service during
8 the China Incident, UMEZU was awarded the Second Class
9 of the Order of the Golden Kite.^{a.}

10 YY-25. UMEZU studied and took action on
11 the basis of "The Outline of the Policy for the
12 Establishment of a New China," submitted to the War
13 Ministry by the Commander-in-Chief of the Kwantung
14 Army on 24 January 1938. This document called for
15 the transformation of China into a nation with a puppet
16 government dependent on Japan and for making the
17 population of "the new China" contribute to preparations
18 for war against the Soviet Union. Inner Mongolia and
19 Hsinking were regarded as bases for invading the
20 Mongolian People's Republic.^{a.}

21 YY-24. a. Ex. 129, T. 798; Ex. 2292, T. 16259.
22 YY-25. a. Ex. 762, T. 7839, p. 4. of Ex.

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1 YY-26. UMEZU's role and participation in
2 military preparations for Japan's aggressive war against
3 the Soviet Union considerably increased while he held
4 the post of Vice-War Minister, and was concurrently
5 a member of the Bureau of Manchurian Affairs headed
6 by the War Minister. It may be seen from the evidence
7 relating to this period of UMEZU's activities which I
8 have cited previously, and it is further corroborated
9 by documents from the War Ministry Diary,^{a.} which
10 incontestably establish the fact that UMEZU did
11 everything in his power to contribute to the increase
12 of the Kwantung Army forces and to the construction
13 of various military objectives in Manchuria, preparing
14 her as a military base for the invasion of Soviet
15 territory by Japanese troops.

16 YY-27. Secret documents, two of which were
17 signed personally by UMEZU, disclose that in 1938 he
18 took drastic measures to increase the strength of the
19 Kwantung Army by extending military service for troops
20 stationed in Manchuria.^{a.}

21 YY-28. UMEZU dealt with problems pertaining
22 to the construction of fortified areas in Manchuria
23 in the vicinity of the Soviet frontier. TOJO

24 YY-26. a. Ex. 719-A, T. 7560-5
25 YY-27. a. Ex. 719-A, T. 7564-5

1 communicated with him with reference to the measures
 2 for the execution of the plan of this construction
 3 scheduled for the years 1938 and 1939.^{a.}

4 YY-29. UMEZU also handled matters relating
 5 to the establishment of meteorological observation in
 6 the Chahar area and in Mongolia for the purpose of
 7 military operations vis-a-vis the U.S.S.R. and China.^{a.}

8 The secret plan of the Kwantung Army Headquarters
 9 drafted in December 1937 and submitted to the War
 10 Ministry provided for a special strengthening of
 11 aeronautical meteorological service in preparation
 12 for hostilities against the U.S.S.R.^{b.}

13 YY-30. During the years 1936 and 1937 the
 14 War Ministry organized and conducted military-
 15 topographical investigation and a lengthy meteorological
 16 observation of various areas of the Soviet Kamchatka
 17 Peninsula for the purpose of landing operations.^{a.}

18 YY-31. Vice-War Minister UMEZU was responsible
 19 for the disbursement of the special secret fund. In
 20 particular, he contributed money out of this fund to
 21 right-wing politicians^{a.} for the purposes of bribery

22 YY-28. a. Ex. 719-A, T. 7565-6

23 YY-29. a. Ex. 719-A, T. 7561-2

24 YY-29. b. Ex. 719-A, T. 7560-1

25 YY-30. a. Ex. 721-A, T. 7568-9

YY-31. a. Ex. 3690, T. 36,855-9

1 in the interests of the conspirators. On 8 March
 2 1938, UMEZU personally received 150,830 yen from the
 3 Secret Funds of the Manchurian Incident.^{b.} On 13
 4 April 1938, UMEZU approved the transfer of 700,000
 5 yen from the Secret Funds of the Manchurian Incident
 6 to Chief of Staff of the Kwantung Army, TOJO, and at
 7 the same time 77,800 yen were transferred to UMEZU.^{c.}

8 YY-32. On 30 May 1938, at UMEZU's suggestion,
 9 Lieutenant General TOJO was appointed Vice-War Minister,
 10 while UMEZU received a new appointment.^{a.} Thus, in
 11 1938 the responsible position of the conspirator UMEZU
 12 was taken over by another conspirator, TOJO.

13 V. UMEZU in the Kwantung Army in Manchuria.

14 YY-33. From September 7, 1939 to July 18,
 15 1944 UMEZU was Commanding General of the Kwantung
 16 Army and Japan's Ambassador to Manchukuo.^{a.} In that
 17 period, under UMEZU's command were concentrated
 18 Japanese armed forces for the realization of one of
 19 the main and immediate objectives of the conspiracy-
 20 invasion of the Soviet Union and the seizure of eastern
 21 territories of the U.S.S.R. UMEZU in his capacity as
 22 Commanding General of the Kwantung Army concentrated
 23 full power in Manchukuo. As a participant of the
 24

25 YY-31. b. Ex. 2212, T. 15,811
 " c. Ex. 2209, T. 15,804
 YY-32. a. Ex. 3300-h, T. 30,094
 YY-33. a. Ex. 129, T. 802

1 conspiracy, he secured for the Japanese ruling
 2 imperialist clique full political, military and economic
 3 domination of Manchuria for the purpose of further
 4 extension of aggression on the continent and in the
 5 South Seas Area. Utilizing the rich resources of the
 6 country, UMEZU made the development of her industry
 7 and agriculture dependent upon the military interests
 8 of Japan and by means of the unbridled exploitation
 9 of the Manchurian population which was deprived of
 10 all rights transformed Manchuria into a colonial
 11 appendage to the war economy of Japan and into a
 12 military base against the U.S.S.R.

13 Aggression against the Soviet Union

14 YY-34. UMEZU's appointment as Commanding
 15 General of the Kwantung Army was brought about by
 16 the defeats suffered by the Kwantung Army in the
 17 course of the undeclared aggressive war waged by
 18 Japan against the U.S.S.R. and the Mongolian People's
 19 Republic in the Khalkhin-Gol river area in the
 20 summer of 1939.^{a.} The Japanese Government and the
 21 High Command removed his predecessor, General UEDA,
 22 from the post of Commanding General of the Kwantung
 23 Army,^{b.}

24 as he was unable to ensure the realization

25 YY-34. a. Ex. 3857, T. 38,368; T. 38,370;

Ex. 760, page 4; Ex. 2621, T. 22,601

" b. T. 22,655; T. 4170; Ex. 762, (page 4 of the

Ex.) T. 7839; Ex. 212, T. 2705; Ex. 273;

T. 3679-82; Ex. 274, T. 3689; Ex. 761-1, T. 7830-1;

Ex. 760-4, T. 7828-9.

1 of the contemplated aggressive plans. UMEZU, due
2 to the experience he gained during his previous
3 activities in China, in the War Ministry and in
4 the General Staff, fully conformed to the qualifications
5 required for that post. However, the situation in the
6 autumn of 1939 was regarded by Imperial Headquarters
7 as unfavorable for the conduct of direct military
8 operations. Time was necessary for gaining strength
9 and for a more thorough preparation for the invasion
10 of the territory of the U.S.S.R. and the Mongolian
11 People's Republic. All the activities of UMEZU
12 were devoted to that. At the beginning of UMEZU's
13 stay in Manchuria the fighting in the Khalkhin-Gol
14 river area was still going on, and the Kwantung Army
15 was transferring troops for further operations in
16 September 1939. The hostilities ceased only on
17 September 16, 1939.^{c.}

18 YY-35. Being Commanding General of the
19 Kwantung Army, UMEZU from 1939 to 1944 directly
20 supervised the drawing up of operation plans and the
21 carrying out of all other military preparations for a
22 war of aggression against the Soviet Union. In 1939
23 and 1941 the basic strategic idea of the Japanese

24 YY-34. c. Ex. 767, T. 7849; Ex. 2621, T. 22,600-1;
25 T. 22,655; T. 23,071; Ex. 2659, T. 23,099.

1 command with regard to the plan of a war with the
2 U.S.S.R. was to concentrate main forces of the
3 Kwantung Army in Eastern Manchuria and capture the
4 principal centers of the Soviet Maritime Province. ^{a.}

5 YY-36. In 1940, in accordance with UMEZU's
6 instructions, the Chief of the Harbin Special Service
7 Organ under UMEZU held a conference of his officers
8 and gave them directives as to the changes in sabotage
9 activities against the Soviet Union in order to raise
10 their efficiency. His directive also provided for
11 measures relating to the guidance of the Russian
12 whiteguards and to training from their midst personnel
13 for the administration of the Soviet territory proposed
14 to be occupied by the Kwantung Army. ^{a.}

15 YY-37. On April 26, 1941, UMEZU held a
16 conference of the Kwantung Army formation commanders
17 at which the Japanese-Soviet Neutrality Pact was
18 appraised as a diplomatic step made to strengthen
19 the alliance of the Axis powers. At that conference
20 it was pointed out that the conclusion of the Neutrality
21 Pact did not entail any changes in the preparation
22 for military operations against the U.S.S.R. ^{a.}

23 YY-35. a. Ex. 834, T. 8096, 8111; Ex. 2415, T. 19,554

24 YY-36. a. Ex. 736-A, T. 7662-3

25 YY-37. a. Ex. 3701, T. 36,908-12

1 YY-38. At the beginning of June 1941,
 2 UMEZU in his conversation with Prince Urach said
 3 that the Tripartite Pact was the unchangeable basis
 4 of Japanese foreign policy and that Japan's attitude
 5 towards the Neutrality Pact with Soviet Union must
 6 undergo a change just as soon as the hitherto existing
 7 German-Soviet relations undergo an alteration.^{a.}

8 YY-39. At the Imperial Conference of July 2,
 9 1941, a decision was reached to take measures for a
 10 secret preparation of war with the Soviet Union and
 11 to solve the so-called "northern problems" by the
 12 use of arms, should the conditions of the German-
 13 Soviet war progress favorably to Japan.^{a.}

14 YY-40. The realization of that decision
 15 was the main mission of the Commanding General of
 16 the Kwantung Army, UMEZU. Numerous evidentiary docu-
 17 ments offered to the Tribunal establish the fact that
 18 UMEZU favored a close military alliance with Germany
 19 against the U.S.S.R. and that he, together with
 20 War Minister TOJO and Chief of the General Staff
 21 SUGIYAMA, Gen, was an author of the "Kantokuen" plan
 22 and prepared the Kwantung Army in 1941-2 for invading
 23 Soviet territory.^{a.}
 24

25 YY-38. a. Ex. 1086, T. 9987

YY-39. a. Ex. 779, T. 7904; T. 7960-1

YY-40. a. Ex. 838 (page 17 of the Ex.) T. 8172;

Ex. 242, T. 2997-3000; Ex. 770, T. 7871;
 Ex. 3701, T. 36,908-11; Ex. 1086, T. 9987

1 YY-41. In July 1941, Imperial Headquarters
 2 instructed the Commanding General of the Kwantung
 3 Army that the purpose of the "Kantokuen" was to
 4 strengthen the preparedness of the army against the
 5 U.S.S.R.^{a.}

6 YY-42. The reports from Tokyo to Berlin
 7 of the German Ambassador and the military attache in
 8 Japan show the military preparations of Japan in 1941
 9 for a surprise attack against the U.S.S.R. and the
 10 important part played in those preparations by the
 11 Kwantung Army under General UMEZU.^{a.}

12 YY-43. As a result of the measures taken
 13 under the "Kantokuen" plan, the numerical strength
 14 of the Kwantung Army under UMEZU more than doubled,
 15 and by the beginning of 1942 increased to 1,100,000
 16 men. The number of tanks in the army increased to
 17 1000, aircraft to 1500 and pieces of ordnance to 5000.^{a.}
 18 UMEZU gave instructions to TAKEBE, Chief of the General
 19 Affairs Department of the government of Manchukuo, with
 20 regard to the full effectuation of the measures provided
 21 for by the "Kantokuen" plan as to the supply of
 22 provisions to the Kwantung Army, etc.^{b.}

23 YY-41. a. Ex. 2676, T. 23,329-30

24 YY-42. a. Ex. 797, T. 7962; Ex. 798, T. 7965-6

25 YY-43. a. Ex. 834, T. 8101; Ex. 838, T. 8169; Ex. 706,
 T. 7532-3; T. 32,064

" b. Ex. 3371, T. 31,840; Ex. 670, T. 8079-80

1 YY-44. On September 16, 1941, UMEZU
 2 himself signed a directive with regard to the
 3 additional training of Russian interpreters according
 4 to the "Kantokuen" plan.^{a.}

5 YY-45. The time for an attack against the
 6 Soviet Union was considered to be so near that in
 7 September 1941, under UMEZU's supervision the 5th
 8 section studying the occupation regime for the Soviet
 9 territories to be occupied by the Kwantung Army was
 10 formed in Kwantung Army Headquarters.^{a.} In the
 11 spring of 1942 UMEZU sent a group of officers headed
 12 by Major-General IKEDA, Chief of the section engaged
 13 in studying the occupation regime on the Soviet
 14 territories, for the special purpose of studying the
 15 experience of the occupation regime on the southern
 16 territories seized by that time. That section in the
 17 Kwantung Army Headquarters continued its work up until
 18 .b.
 19 1943.

20 YY-46. On December 5, 1941, UMEZU held a
 21 conference of Kwantung Army formation commanders at
 22 which it was proposed that the continually carried on
 23 preparation for military operations against the

24 YY-44. a. Ex. 832, T. 8080-1

YY-45. a. Ex. 3371, T. 31,840; T. 31,933-4; T. 36,946,
 T. 37,149-50

25 b. T. 37,150-4; T. 31,933-4; Ex. 3730, T. 37,136-7.

1 Soviet Union be completed, the study of the military
 2 position of the U.S.S.R. be intensified and the
 3 symptoms of the so-called turning point for active
 4 operations be speedily determined.^{a.} It is clear
 5 that what is meant here is ULEZU's intention to
 6 determine as precisely as possible the time in the
 7 Soviet-German war most favorable for the invasion
 8 of Soviet territory by the Kwantung Army.^{b.}

9 YY-47. The operational plan of aggressive
 10 war against the U.S.S.R. which was drawn up in 1942
 11 and remained in force until the spring of 1944 was
 12 signed by ULEZU, Commanding General of the Kwantung
 13 Army.^{a.} Detailed testimony concerning the contents
 14 of that plan is contained in the affidavits of the
 15 witnesses, General KITA, Lieutenant-Generals KUSABA
 16 and MURAKAMI, Major-General MITSUJURI, Tokokatsu,
 17 and General, Staff Officer SEJIMA, Ruizo, submitted
 18 to this Tribunal.^{b.} The latter three were cross-
 19 examined and fully corroborated their testimony.
 20

21 YY-48. Evidence was offered to the Tribunal
 22 containing the detailed data about the construction
 23 of a military base in Manchuria for an attack against

24 YY-46. a. Ex. 3700, T. 36,902-4
 " b. Ex. 636, T. 7963-4; Ex. 808, T. 7987;
 25 " Ex. 830, T. 8071-4; Ex. 801-A, T. 7971-2
 YY-47. a. Ex. 836, T. 8144
 " b. Ex. 836, T. 8141-4; Ex. 834, T. 8099-8100;
 Ex. 835, T. 8128-35; Ex. 838, T. 8167-8;
 Ex. 722, T. 7576.

1 the U.S.S.R. UEEZU played a leading role in that in
 2 the course of almost a decade when he from 1936 to
 3 1938 was Vice-War Minister, and from 1939 to 1944
 4 Commanding General of the Kwantung Army and then
 5 Chief of the General Staff until the surrender. It
 6 will suffice to refer to some of these data to see
 7 what dimensions military construction assumed in
 8 Manchuria in the course of those years. From 1936
 9 to 1945, 5,364 kilometers of new strategic railways
 10 providing the military base with communications directed
 11 against the U.S.S.R. were built in Manchuria.^{a.} During
 12 the same period were built: 15 airbases, 73 airfields
 13 and 178 landing grounds,^{b.} 10 new fortified areas
 14 and more than 4000 permanent fortifications,^{c.} 290
 15 military dumps,^{d.} and new barracks which could accommodate
 16 over 40 divisions.^{e.} The testimony given by a number
 17 of witnesses confirms these data about the construction
 18 in Manchuria of a military base against the U.S.S.R.^{f.}

19 YY-49. In June 1943 Major-General DOI, Akio,
 20 Chief of the Information Department of the Kwantung
 21 Army who was directly under UEEZU's command and took
 22

23 YY-48. a. Ex. 712, T. 7547-9; Ex. 838, T. 8170-2
 24 " b. Ex. 713, T. 7551
 25 " c. Ex. 714, T. 7552-3
 " d. Ex. 715, T. 7555
 " e. Ex. 716, T. 7556-7
 " f. Ex. 699, T. 7571; Ex. 722, T. 7576

his orders, held a conference in Harbin at which
1 directives as to sabotage activities against the
2 U.S.S.R. and the Mongolian People's Republic were
3 given. The document of this conference entitled:
4 "The Directions in Relation to the Guidance of the
5 White Russians" called for the employment of white-
6 guards, regardless of whether they were men or women
7 or whether they wished it or not, for the war with the
8 Soviet Union, and especially for the secret war with
9 the Soviet Union.^{a.} The tasks and methods of subversive
10 activities against the Soviet Union and the Mongolian
11 People's Republic are set forth in another document.^{b.}
12 The secret "Plan for Carrying out the Training of
13 White Russian Youth in the Special Immigration
14 Settlements" prepared by the Harbin Special Service
15 Agency pertains to the same period of time. It
16 provided for a large-scale training of personnel to
17 be used in subversive activities against the U.S.S.R.
18 The funds for this training were appropriated from
19 Japan's national budget.^{c.}

21
22 YY-50. In the time when UMEZU was Commanding
23 General of the Kwantung Army (1940-43) the number of

24 YY-49. a. Ex. 738, T. 7669
" b. Ex. 740, T. 7670-1
25 " c. Ex. 739, T. 7669-70

1 violations of the borders of the Soviet Union by
2 the Japanese agents was constantly increasing. In
3 1940 the number of violations of Soviet borders
4 by the Japanese officers and men amounted to 59;
5 in 1941 -- 136; in 1942 -- 229; in 1943 -- 414 cases.
6 In the same period Japanese aircraft violated the
7 Soviet borders 56 times in 1940, 61 in 1941, 82 in
8 1942, 119 in 1943 and 171 times in 1944.^{a.}

9 B. Japanese Domination of Manchuria.

10 YY-51. UMEZU in his capacity as Commanding
11 General of the Kwantung Army was guaranteed that he
12 could fully dominate Manchukuo.^{a.} UMEZU made use of
13 that to realize the objectives of the criminal conspiracy
14 with regard to Manchuria as well as in preparing aggression
15 against the Soviet Union and also for the further
16 expansion of the Japanese aggression in China and
17 its extension to the South Seas areas.
18
19
20
21

22 YY-50. a. Ex. 750, T. 7774-5.
23 YY-51. a. Ex. 241, T. 2975
24
25

YY-52. The witness Henry Pu-Yi, former
1 Emperor of Manchukuo, testified that practical activities
2 of UMEZU, Commanding General of the Kwantung Army, was
3 aimed at transforming Manchuria into a Japanese colony.^{a.}
4 The Japanese imperialists wanted first to enslave Man-
5 churia, then China proper, East Asia and then the whole
6 world.^{b.} Under UMEZU the Emperor of Manchukuo had in
7 fact no power and no rights. Pu-Yi testified about
8 the Japanese that "on paper, in order to cheat the
9 people the world over, they make Manchukuo look as if
10 it is an independent state. But in actuality Manchukuo
11 was being administered by the Kwantung Army."^{c.} The
12 Emperor of Manchukuo had no right to interfere with
13 financial and military matters, no right to appoint
14 civilian and military officials.^{d.} According to Pu-Yi
15 the Japanese Chief of the General Affairs Department of
16 the Government of Manchukuo had more power than the
17 Chinese Prime Minister.^{e.}

19 YY-53. The witness, TAKEBE, Rokuzo, Chief of
20 the General Affairs Department of the Government of
21 Manchukuo testified before the Tribunal that the ad-
22 ministration all over the country was in the hands of

24 (YY-52. a. T. 4002-4.
25 b. T. 4012.
c. T. 3991.
d. T. 3990-1.
e. T. 3993.)

1 the Japanese. The Japanese Vice-Ministers were actual
 2 supervisors in the ministries of Manchukuo. Those Vice-
 3 Ministers were under the Chief of the General Affairs
 4 Department who in turn was directly subordinated to the
 5 Commanding General of the Kwantung Army UMEZU.^{a.} The
 6 witness confirmed that the main purpose of the occupation
 7 of Manchuria was the establishment of a military base on
 8 the continent directed mostly against the Soviet Union
 9 and China.^{b.}

10 YY-54. Under UMEZU the realization of the
 11 second half of the plan of industrial development of
 12 Manchukuo was completed in which special stress was laid
 13 upon the exploitation of resources of the country neces-
 14 sary for the prosecution of the war and for satisfying
 15 the needs of Japan.^{a.} The same military aims were also
 16 pursued by the second plan of the industrial development
 17 of Manchukuo drawn up under UMEZU in the course of the
 18 Pacific war.^{b.}

19 YY-55. In 1941 after Germany attacked the
 20 Soviet Union a system of compulsory labor of the popu-
 21 lation for military purposes was introduced in Manchuria
 22 on UMEZU's initiative.^{a.} The witness Pu-Yi testified

24 (YY-53. a. Ex. 3371, T. 31837-9;

b. Ex. 670, T. 7582.

25 YY-54. a. Ex. 446, T. 5071.

b. Ex. 670, T. 7583; Ex. 454, T. 5178;

Ex. 471, T. 5347.

YY-55. a. Ex. 670, T. 7585-6.)

1 about that as follows: "That was at the time when
2 General UMEZU was there. People at the age between
3 eighteen and forty-five were required to render labor
4 service to the Japanese and to the Japanese Army. This
5 enslaved the people of Manchuria and colonized Manchuria.
6 These people were used for opening highways and digging
7 mines" ^{b.} and also for the preparation of Japanese arma-
8 ments. ^{c.} The Chinese workers were in terrible condition.
9 They received insufficient and almost uneatable food;
10 lived in bad quarters; the sick received no medicines;
11 and if they left their jobs they were severely punished. ^{d.}

12 YY-56. Under the Commanding General of the
13 Kwantung Army UMEZU the immigration of the Japanese to
14 Manchuria was carried out and their lots of land were
15 either confiscated from the Manchurian peasants for a
16 small compensation or without any compensation and the
17 peasants themselves were evicted and had to settle on
18 uncultivated land. ^{a.}

19 YY-57. UMEZU, as Commanding General of the
20 Kwantung Army, bears the responsibility for the
21 atrocities perpetrated by the Japanese soldiers and the
22 soldiers of the army of the puppet government against
23 the Chinese in the province of Jehol in August, 1941,
24

25 (YY-55. b. T. 4037.

c. T. 4038.

d. T. 4039.

YY-56. a. T. 4033, T. 4035-6.)

when during one night over 300 families were murdered
 1 under the pretext of looking for guerillas and the
 2 village Siduti in the Pingchuan district was completely
 3 burned down.^{a.} Punitive expeditions in Jehol Province
 4 organized by the Kwantung Army Command took place also
 5 in 1942-43.^{b.}

6 YY-58. UFEZU bears the responsibility for
 7 the drug traffic in Manchuria, as everything connected
 8 with poppy growing and the distribution of opium was
 9 under the control of the Kwantung Army. In the budget
 10 of Manchukuo for 1943 the revenue from the drug traffic
 11 amounted to 110 million yen, as compared with 20 million
 12 yen in 1936,^{a.} and 30 million yen in 1937.^{a.}

14 YY-59. The Commanding General of the Kwantung
 15 Army, UFEZU, paid great attention to the matters of
 16 ideological and military preparation of the people of
 17 Manchuria for wars of aggression. That purpose was
 18 served by the Concordia Society established by the Japa-
 19 nese imperialists. That organization preached the
 20 racial ideology, the "new order" and the domination by
 21 the Japanese of Asia and of the whole world, and was
 22 also the center of propaganda of Japanese militarism.
 23 UFEZU actually supervised the activities of this

24 (YY-57. a. Ex. 360, T. 4656.
 25 b. Ex. 3725, T. 37117.
 YY-58. a. Ex. 386, T. 4750-1; T. 4040-3; Ex. 2461-A,
 T. 20306; T. 20348-9.)

organization.^{a.} He was an honorary councillor of the
 1 Concordia Society. After the reform of the Concordia
 2 Society in 1941 had been carried out, the governors of
 3 the provinces were appointed chiefs of provincial head-
 4 quarters of the Concordia Society. They were repeatedly
 5 instructed by UMEZU.^{b.} In October, 1941, UMEZU attended
 6 the 8th All-Manchurian Congress of the Concordia Society.
 7 To attend that congress which was held after Germany
 8 had attacked the Soviet Union, representatives of White
 9 Russian emigrants were invited for the first time.^{c.} In
 10 accordance with UMEZU's instructions, the Concordia
 11 Society co-operated with the Kwantung Army in trans-
 12 forming Manchuria into a military base for a war against
 13 the U.S.S.R. Special combat groups "Sempodan" were
 14 organized in the Concordia Society for operations in the
 15 rear of the Soviet Army.^{d.}

17 YY-60. In February, 1942, UMEZU participated
 18 in the sessions of the Extraordinary All-Manchurian
 19 Congress of the Concordia Society and in his speech con-
 20 taining directives pointed out that the objective of the
 21 East Asia war was to expel the influence of Great
 22 Britain and the U.S.A. from East Asia, to establish the
 23 "new order" and to carry out the ideas of "Hakko-Ichiu."
 24

25 (YY-59. a. Lx. 731, T. 7605; Ex. 3371, T. 31839-40.
 b. Ex. 3853, T. 38276.
 c. Ex. 731-A, T. 7608-9.
 d. Ex. 670, T. 7600, Ex. 699, T. 7597-8.)

1 UMEZU regarded Japanese victories in the Pacific War as
2 a great step towards the establishment of the "new
3 order in Asia."^{a.}

4 YY-61. In 1940, on UMEZU's order, Pu-Yi, the
5 Emperor of Manchukuo, visited Japan and received there
6 the treasures of Shintoism. After that, according to
7 UMEZU's instructions, Shintoism was declared the
8 national religion of Manchukuo and a refusal to follow
9 it entailed imprisonment.^{a.}

10 C. UMEZU's Role in the Pacific War.

11 YY-62. At the end of November, 1941, the
12 Command of the Kwantung Army was advised by wire that
13 Japan was preparing for a war with the U.S.A.^{a.} In
14 accordance with UMEZU's instructions, the following
15 were prepared and published on December 8, 1941, on the
16 day of the outbreak of the Pacific War:

17 a) Manifest of the Emperor of Manchukuo about
18 Manchurian assistance to Japan;

19 b) Declaration of the Government of Manchukuo
20 which stated that the people of Manchuria had to assist
21 Japan in the war against the U.S.A. and England;

22 c) The statement of the Concordia Society
23 Central Headquarters about its full support of the
24

25 (YY-60. a. Ex. 731-A, T. 7610-12.

YY-61. a. T. 4005-4017; T. 4170-71, T. 4274-77.

YY-62. a. Ex. 3699, T. 36897.)

b.
Government.

UMEZU took all measures to ensure that the progress of the Pacific War be favorable for Japan and that the South Seas area be occupied.

c.
YY-63. UMEZU bears the responsibility for the illegal temporary courts-martial trying the cases of the prisoners of war operating in the Kwantung Army and for the illegal sentences they handed down on the prisoners of war of the Allied Armies.

a.
YY-64. UMEZU also bears the responsibility for the mistreatment of the prisoners of war in the POW camps in Manchuria. As a result of undernourishment, unbearably heavy work, and poor medical care, many prisoners of war died of exhaustion and various diseases.

VI. UMEZU in the Japanese General Staff.

YY-65. From July 18, 1944, to September 2, 1945, UMEZU was Chief of the Japanese General Staff, and as one of the main leaders of the conspiracy bears the responsibility for all the measures taken when he directed the activities of the General Staff connected

(YY-62. b. Ex. 731-A, T. 7610, T. 4286; T. 36950-1; Ex. 3853, T. 38274.
c. Ex. 454, T. 5178; Ex. 731-A, T. 7610-12; T. 36955, T. 4121-22.

YY-63. a. Ex. 1998, T. 14689.

YY-64. a. Ex. 1905-A, T. 14187-8; Ex. 1906-A, T. 14187-8; Ex. 1912-A, T. 14192;

Ex. 1913-A, T. 14193.

YY-65. a. Ex. 129, T. 802-3.)

1 with the continuation for over a year of a war of
2 aggress.on in the South Seas area and in China.

3 YY-66. After the statement of the Prime
4 Minister, KOISO, at the beginning of April, 1945, about
5 his resignation and about the necessity of reorganizing
6 the Cabinet in the prevailing war situation, Chief of
7 the General Staff UMEZU during the conference with KIDO
8 emphasized the necessity of forming such a Cabinet which
9 would co-ordinate its actions with the desires of the
10 army to wage war until the end. UMEZU proposed to KIDO
11 his plan of forming a wartime Cabinet.^{a.}

12 YY-67. In November, 1944, when UMEZU was
13 hold'ng the post of Chief of the General Staff, Japa-
14 nese troops invaded Kweilin and Liuchow (China). UMEZU
15 bears the responsibility not only for the invasion it-
16 self, but also for the atrocities committed by the
17 Japanese military in the Kweilin district, Liuchow and
18 other districts of China in 1944-45.^{a.}

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23
24
25 (YY-66. a. Ex. 1282, T. 11390-2.
YY-67. a. Ex. 352-359, T. 4651-4655.)

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YY-68. UMEZU in his capacity as Chief of the
General Staff and one of the leaders of the Imperial
1 Headquarters bears the responsibility for the instruc-
2 tions and orders of the War Ministry (March 1945), in
3 violation of treaties, assurances, laws and customs
4 of war with regard to the regime for prisoners of war,
5 providing for the extraordinary measures which in-
6 cluded the utilization of prisoners of war for work
7 in the areas subjected to air raids.^{a.}

9 YY-69. UMEZU as Chief of the General Staff
10 bears the responsibility for numerous cases of execu-
11 tion without trial and after illegal trials of flyers
12 taken prisoner, cases which took place on the ter-
13 ritory of Japan proper in 1945 and for tolerating
14 atrocities against prisoners of war.^{a.}

15 YY-70. UMEZU as Chief of the General Staff
16 also bears the responsibility for the mistreatment
17 of prisoners of war and for tolerating atrocities
18 against them on the part of the Japanese army, not
19 only in Japan herself, but also on territories
20

21 ~~YY-68.~~

22 a. Ex. 2012, T. 4719-21; Ex. 2013 (not read);
Ex. 2014, T. 14723-4; Ex. 1978, T. 14543-48.

23 ~~YY-69.~~

24 a. Ex. 1994, T. 14674-76; Ex. 1995, T. 14679-80;
Ex. 1921, T. 14205-8; Ex. 1922, T. 14209-11;
25 Ex. 1923, T. 14212-8; Ex. 1924, T. 14218-9.

occupied by the Japanese army.^{a.}

1
2 YY-71. During the surrender of Japan, when
3 Chief of the General Staff, UMEZU, was in Tokyo,
4 all secret documents and archives of the General
5 Staff were burned for the purpose of concealing the
6 traces of the committed crimes. Among the destroyed
7 documents were the documents relating to the direction
8 of the war, the mobilization and operations plans,
9 records of the meeting of the Supreme Council for
10 directing the war and other secret document.^{a.}

11 VII. Defense evidence.

12 YY-72. The defense in offering evidence
13 about the accused UMEZU mostly dealt with his
14 activities in North China, in the War Ministry and
15 in the General Staff and was carefully trying to
16 forebear from mentioning his activities when he held
17 the post of Commanding General of the Kwantung Army
18 as well as from mentioning all matters connected
19 with the charge brought up against UMEZU as to his
20 preparing and planning aggression against the U.S.S.R.
21 and his participation in the conspiracy. All the

22 YY-70.

23 a. Ex. 1917-1932, T. 14198-14233;
24 Ex. 1936-1949, T. 14236-14255.
25 Ex. 1951, T. 14257.

YY-71.

a. Ex. 742, T. 7676, 7683.

1 evidence offered by the defense consists, with a few
2 exceptions, of testimony given by witnesses most of
3 whom either were under UMEZU and participated them-
4 selves in the planning, preparation and perpetration
5 of aggression against China, the Soviet Union, the
6 United States of America, Great Britain and other
7 countries or were on close terms with UMEZU. Those
8 witnesses are people who are very much interested in
9 the verdict with regard to UMEZU and their testimony
10 can by no means be regarded as objective, the more so
11 as it directly contradicts the facts.

12 YY-73. Defense witnesses ISHIKAWA and
13 SHIBAYAMA were obviously biased in describing UMEZU's
14 role in the events in China in 1935 which led to the
15 Ho-UMEZU agreement. ISHIKAWA, for instance, testified
16 that in April 1934 UMEZU allegedly had told him:

17 "I would rather prefer being called a fool
18 during my stay than having trouble with China." But
19 even this witness testified that UMEZU had told him
20 that he had sent Colonel SAKAI, his Chief of Staff,
21 to meet the representatives of the Chinese government
22 and submitted to them the terms among which were the
23 withdrawal of Chinese troops and local party organiza-
24 tions from North China districts in which were
25

Japanese residents.^{a.}

1 Does not this alone show that the conflict
2 with China in 1935 was in fact brought about by the
3 actions of UMEZU which constituted a serious inter-
4 ference in the internal affairs of the Chinese republic?
5 ISHIKAWA contends that those terms were allegedly
6 voluntarily accepted by the Chinese general Ho who
7 carried them into effect at his own discretion. Later
8 on ISHIKAWA recalled that Colonel SAKAI allegedly
9 criticized UMEZU because the latter gave up the policy
10 of violence and putting military pressure on the
11 Chinese. The witness "forgets" that UMEZU's demands
12 were an ultimatum and that they were made with a
13 threat that the Japanese army in North China would
14 take unrestricted measures.^{b.} But it simply was not
15 necessary to effectuate that threat at that time as
16 the ultimatum was accepted. There is no doubt that
17 one could not speak of any "voluntary" acceptance of
18 the ultimatum by the Chinese side. How can it be
19 explained that the testimony of this witness is at
20 variance with the established facts? The reply to this
21 may be found in the admission of the witness that he
22 was on intimate terms with UMEZU.^{c.} In the course of

23 YY-73.

24 a. Ex. 2491, T. 20783-7.

25 b. Ex. 194, T. 2275.

c. Ex. 2491, T. 20784.

1 a very short cross-examination of the witness
2 SHIBAYAMA, it was established that he as far back
3 as December 1934 had left North China to occupy his
4 new post, and therefore his testimony about the
5 events of 1935 which he knew only from hearsay have
6 absolutely no value for the Tribunal.^{d.}

7 YY-74. The defense tried to exaggerate the
8 part played by SAKAI and to belittle the role of
9 UMEZU in the events of 1935 in North China. However,
10 the entry in the SAIONJI-HARADA diary of June 24,
11 1935, an excerpt from which was offered by the
12 defense, confirms that SAKAI, Chief of Staff of the
13 Japanese army in North China, did not act without
14 permission while conducting the negotiations with
15 the representatives of China, but acted in accordance
16 with UMEZU's instructions.^{a.} The fact of General
17 SAKAI having been convicted and executed in 1946 for
18 acts of aggression against China^{b.} shows how heavy
19 were the crimes committed by him in accordance with
20 the direct instructions of the accused UMEZU.
21

22 YY-75. Defense witnesses AYABE, Kentaro,
23 YAMAMOTO, Moichiro, NISHIO, Toshizo, OKADA, and

24 YY-73.

d. T. 20780.

25 YY-74.

a. Ex. 3693-A, T. 36884.

b. Ex. 3694, T. 36885.

1 Nathan made an attempt to give a favorable character-
2 ization of UMEZU's activities while he held the post
3 of Vice War Minister (1936-1938).^{a.} Those personal
4 opinions of UMEZU expressed by his former friends
5 and colleagues are not relevant to the issues in this
6 case. If we turn to facts we shall see that even the
7 facts given in the testimony of these witnesses speak
8 against UMEZU. The witnesses AYABE, Kentaro, YAMAMOTO,
9 Moichiro and NISHIO, Toshizo, made an attempt to
10 contend that UMEZU's convictions were that the army
11 should be far from political life and that he
12 allegedly took measures to that effect.^{b.} However,
13 one of these witnesses YAMAMOTO, Moichiro, former
14 secretary to UMEZU in the War Ministry, testified
15 that UMEZU in his capacity as Vice-Minister was
16 responsible for the distribution of money from the
17 secret fund and admitted that the money from that
18 fund had been paid out to various politicians includ-
19 ing the right-wing politicians.^{c.} It is quite obvious
20 that that was a system of organized bribery of the
21 politicians in the interests of the conspirators.
22

23 YY-75.

- 24 a. Ex. 3689, T. 36843; Ex. 3690, T. 36851;
Ex. 3691, T. 36865; T. 18312-13;
25 Ex. 3695, T. 36887.
b. Ex. 3689, T. 36843-45.
c. Ex. 3690, T. 36851-9.

1 Another witness, NISHIO, Toshizo, confirmed that there
2 was strong opposition against UGAKI in the High Com-
3 mand, and if UGAKI had formed the Cabinet in January
4 1937, the situation in the army would have been such
5 that it would have been impossible to avoid disturb-
6 ances.^d Does not this also show how the army leaders,
7 including UMEZU, interfered in politics and in the
8 selection of candidates for the post of the Prime
9 Minister, resorting to such a convincing argument as
10 "military force."

11 YY-76. The witnesses IIMURA, Minoru, and
12 YAMAMURA, Haruo, tried to reduce UMEZU's participation
13 in the undeclared aggressive war waged by Japan in
14 1939 against the U.S.S.R. and the Mongolian People's
15 Republic in the Khalkin-Gol River area to the peaceful
16 settlement of the "incident," as the hostilities
17 ceased soon after UMEZU's arrival to occupy the post
18 of Commanding General of the Kwantung Army. However,
19 the Tribunal is already aware that the Japanese troops
20 ceased hostilities not because of the peaceful inten-
21 tions of the new Commanding General, but as a result
22 of the defeat of the Japanese troops by the Soviet and
23 Mongolian forces and that the cessation of hostilities

24
25 YY-75.

d. Ex. 3691, T. 36866-9.

led to the preparation of a new and stronger attack
1 of a wider scope under UMEZU's guidance. These
2 witnesses as well as the witnesses KASAHARA and
3 KOZUKI tried to substantiate the peaceful intentions
4 which UMEZU allegedly had with regard to the Soviet
5 Union by stating that in their opinion due to the
6 arrival of UMEZU in the Kwantung Army the situation
7 on the borders with the Soviet Union became normal.^{a.}
8 the witness IIMURA overdid it when he contended that
9 not a single incident took place on the border in
10 the course of five years when UMEZU was in the Kwan-
11 tung Army.^{b.} The testimony given by these witnesses
12 contradicts the established facts. It will suffice
13 to point out that under UMEZU the number of violations
14 of the Soviet border was increasing from year to year,
15 and in 1943 reached the culminating point -- 414 cases.
16 Such a number of violations did not take place under
17 any predecessors of UMEZU in the post of Commanding
18 General of the Kwantung Army.^{c.} During the cross-
19 examination of the witness IIMURA, it was established
20 that he gave testimony on a matter about which he knew
21 nothing.^{d.}
22

23 YY-76.

- 24 a. Ex. 2679, T. 23396-23402. b. Ex. 2679, T. 23400.
25 Ex. 2680, T. 23416-8. c. Ex. 750, See YY-50.
Ex. 2670, T. 23203. d. T. 23405.
Ex. 2683, T. 23458-60.

1 YY-77. Defense witnesses, as a rule, avoided
2 testifying about the large-scale military preparations
3 which were constantly carried on by UMEZU for a war of
4 aggression against the Soviet Union, and if they men-
5 tioned them they tried to belittle their scope and show
6 them as "defensive" measures. That was done, for
7 instance, by the witness IIMURA, who admitted that the
8 Kwantung Army Headquarters had plans for the construc-
9 tion of airfields and airbases and that a small number
10 of them had already been built, but that that had
11 allegedly been done for self-defense.^{a.} The Tribunal
12 is already aware what a great number of military objec-
13 tives for an attack on the Soviet Union were built in
14 Manchuria under UMEZU and there is no need to enumer-
15 ate them again.^{b.}

16 YY-78. The witness KASAHARA testified that
17 the plan of operations against the U.S.S.R. for 1942-
18 1943 provided for an offensive operation in the southern
19 areas of the Maritime Province and for a seizure of
20 Soviet air-bases, but explained that that was allegedly
21 planned also for the purpose of defense.^{a.} During
22 the cross-examination, KASAHARA was exposed as an

24 YY-77. a. Ex. 2684, T. 23,473-4

 b. See YY-48.

25 YY-78. a. Ex. 2670, T. 23,190--23,208

1 author of a proposal for an aggressive war against the
 2 Soviet Union.^{b.}

3 YY-79. The same fate also befell the witness
 4 TAKEI, Seitaro during his cross-examination when he
 5 contended that the Kwantung Army allegedly had to main-
 6 tain normal relations with the Soviet Union.^{a.} At
 7 the same time this witness had to identify a document
 8 exposing UMEZU and showing that UMEZU in December 1941
 9 gave instructions in accordance with which the Kwantung
 10 Army had to be ready for an attack on the Soviet Union
 11 and was only awaiting an opportune time.^{b.}

12 YY-80. Two Japanese defense counsel, IKEDA and
 13 OGOSHI, former subordinates of UMEZU, were produced
 14 as defense witnesses. Both of them tried to make the
 15 position of UMEZU easier in this trial.^{a.} However,
 16 they failed to do that and during cross-examinations
 17 had to confirm the incontestable facts showing UMEZU's
 18 preparation of aggression against the U.S.S.R. Those
 19 facts also included the study of the occupation regime
 20 for the Soviet territories planned to be seized by the
 21 Kwantung Army.^{b.}

22 YY-81. Defense witnesses TAKEI, Seitaro,
 23 and TANAKA, Ryukichi, tried to contend in their testi-

24 YY-78. b. T. 23,217; Ex. 2671, YY-80. a. Ex. 3703, T.36,942-
 25 T. 23,218-25 44; Ex.3730, T.
YY-79. a. Ex. 3699, T.36,897 37,136-7
 b. T. 36,898-905 b. T.36,946; T.37,138

1 mony that UMEZU allegedly was not an advocate of the
2 Pacific war. ^{a.} That contention is refuted by the
3 prosecution's evidence proving what an important part
4 UMEZU played in the conspiracy and in the preparation
5 of the whole Japanese army for war and showing the
6 measures which he took during the war.

7 YY-82. Defense witness INOUE, Tadao, former
8 secretary of the Chief of the General Staff made an
9 attempt to substantiate by "objective" reasons the
10 allegedly poor information of the leaders of the General
11 Staff regarding the outrages perpetrated against the
12 prisoners of war and the civilian population at the
13 fronts. According to him, from the end of 1944 and
14 through 1945 the war situation was such that communica-
15 tion with the troops was maintained by radio and was
16 confined to operational information. ^{a.}

17 Strange and absolutely untrustworthy are the
18 attempts of these defense witnesses and their like to
19 shield UMEZU, who occupied the post of Chief of the
20 General Staff, by naive allegations that UMEZU alleged-
21 ly had not been aware of the mistreatment of prisoners
22 of war not only at the fronts, but also in Japan herself.

24 YY-81. a. Ex. 3699, T. 36,896-7; Ex. 3703, T. 36,924-5;
25 T. 36,917-8
YY-82. a. Ex. 3704, T. 36,927-8

VIII. Conclusion

1
2 YY-83. The evidence offered by the prosecution
3 has established that UMEZU participated in a conspiracy
4 against peace during the whole period covered by the
5 Indictment and that all his practical activities as
6 one of the leaders of the conspiracy aimed at the
7 establishment by Japan of her military, political and
8 economic domination in the areas of East Asia, Pacific
9 and Indian Oceans, and at the perpetration of aggres-
10 sion against the freedom-loving nations of China, the
11 Soviet Union, the U. S. A., Great Britain and other
12 countries. UMEZU held most important posts in the army
13 at all the stages of the development of the criminal
14 conspiracy and directly supervised the planning, prep-
15 aration and waging of aggressive wars and thus commit-
16 ted the heaviest crimes against peace and humanity.
17 All the counts of the Indictment on which UMEZU is
18 charged have been substantiated by the prosecution's
19 evidence.
20

21 (The following was not read:)

22 This evidence may be found in the following
23 sections:
24
25

	<u>Counts</u>	<u>Sections</u>
1	1 - 5	I, II, III, IV, V, VI,
2	6 - 17	I, II, III, IV, V, VI
3	18 - 19	II, III, IV
4	26	V
5	27 - 28	II, III, IV, V, VI
6	29 - 32, 34	V, VI
7	36	V
8	44 - 51	II, III, IV, V, VI
9	53 - 55	V, VI
10		
11		
12		Your Honor, this concludes the prosecution's
13		case.
14		THE PRESIDENT: We will recess for fifteen
15		minutes.
16		(Thereupon, at 1445, a recess was
17		taken until 1500, after which the proceed-
18		ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If it please the Tribunal,
5 the prosecution has now completed its summation. We
6 are now engaged in the preparation of a simple name
7 index to the summation which should be completed very
8 shortly; and, if the Tribunal would like to have it
9 or could use it, we would be very glad to submit it.

10 THE PRESIDENT: I can see no reason why we
11 should not accept such an index. But, if the defense
12 care to object, we will hear their objections.

13 I understand there is no objection. The
14 Court will be pleased to receive that, Mr. Tavenner.

15 Dr. UZAWA.

16 - - -

17 SUMMATION BY THE DEFENSE

18 - - -

19 DR. UZAWA: If it please the Tribunal, I
20 shall now present the introductory statement of the
21 defense summation. A few slight corrections and
22 alterations have been made in the English text.
23 Having had no time to prepare an errata sheet, I wish,
24 with the Tribunal's permission, to have the Court
25 Interpreter read the text as corrected.

INTRODUCTORY STATEMENT

1 Mr. President and Members of the Tribunal:

2 We stand poised at the conclusion of a most
3 ambitious undertaking, consuming many months of
4 arduous labor during which this great international
5 body has with singular patience endured the difficult-
6 ties and unavoidable delays inherent in these proceed-
7 ings. We of the Japanese defense section are keenly
8 aware and most deeply appreciative of the kind and
9 gracious indulgence, assistance and guidance of this
10 Tribunal which has been constant even to the minutest
11 details. We are also most grateful to this Tribunal,
12 the Supreme Commander and the other authorities in
13 having made available to the accused and to us the
14 invaluable assistance of our learned American collegues.
15 Mr. President and Members of the Tribunal, the
16 expression of such sentiments may be most unusual but
17 the record of this unprecedented trial would be amiss
18 without their inclusion.

19 The Chief Prosecutor in the closing address
20 stated that we have come to the "closing of the gates."
21 If I may be permitted, I should say that we are come
22 to the "opening of the gates" to the rule of reason
23 and law. The vista to be opened must sound in the
24 universality of human morality, justice and law and
25

1 must accord with the lessons and teachings of history
2 and all human experience. That great task is not alone
3 the simple determination of guilt or innocence of
4 these accused; it is the charting for ourselves and
5 our future generations the path to a world of peace
6 and justice in which the dignity of man will prevail.

7 1. The World Crisis and Unrest of the Far
8 East.

9 Since the dawn of history there has been
10 war. War is a reality, and belongs to one of the
11 most serious and dangerous phenomena in human so-
12 ciety. To exterminate war no effective means has
13 yet been established in international law or in inter-
14 national relationship. Various methods have been
15 devised one after the other to prevent the occurrence
16 of wars between nations through agreements, security
17 pacts, or by forming leagues, but practically none
18 of them proved to be effective. Great has been the
19 effort of international law scholars to terminate war,
20 but it is to be deeply regretted that no fruitful
21 result has yet been achieved so far.

22 It has been stated that a war of aggression
23 constitutes an international crime, but no world law
24 can be found which gives the definition of the aggres-
25 sive war. Nor has there been any international

1 agreement with which a judgment can be passed on an
2 actual case of aggression at the International Court.

3 Not a few wars have been fought between
4 modern civilized countries, but almost none of them
5 were really desired by the parties concerned. Wars,
6 especially those between sovereign powers, are un-
7 desired wars, but in actuality it was not possible
8 to avoid them. In nature we find destructive forces,
9 such as storms, floods, earthquakes and eruptions of
10 volcanoes, and in human history we can find their
11 parallels and one of the greatest of which is war.
12 On June 4, 1946, at the Far Eastern International
13 Military Tribunal, the Chief of Counsel of the prosec-
14 ution asserted in the opening statement:

15 "Mr. President, this is no ordinary trial,
16 for here we are waging a part of the determined
17 battle of civilization to preserve the entire world
18 from destruction. This threat of destruction comes
19 not from the forces of nature, but from the deliber-
20 ate planned efforts of individuals, as such and as
21 members of groups who seem willing to bring the world
22 to a premature end in their mad ambition for domina-
23 tion."
24

25 This statement gives us much food for study
and comment. When a matter as to the existence of

1 a certain act on the part of a defendant has been
2 taken up, a mere analytical treatment of the case
3 and then combining the results cannot be considered
4 convincing enough from the theoretical point of view.

5 War is essentially a phenomenon in human society,
6 but it also has a characteristic which demands a
7 treatment from the angles of sociology as well as
8 from those of social-jurisprudence. We also cannot
9 disregard a phase of its nature which requires
10 biological approach. Even though it is not a kind
11 of physical force, if it can be often observed as un-
12 avoidable occurrence arising out of social relation-
13 ship and biological existence of human life, we must
14 frankly recognize it as a force, like physical force
15 of nature, which is sometimes beyond human control.
16 The Chief Prosecutor further stated in his opening
17 statement:

18 "The leading nations of the world, by suc-
19 cessive agreements and treaties took another defin-
20 ite step in the evolution of international law, after
21 the close of World War I, by specially declaring:
22 "A war of aggression constitutes an international
23 crime." That statement was made a part of the Geneva
24 Protocol for the pacific settlement of International
25 Disputes and was signed by the representatives of

1 forty-eight nations. This was followed in the Eighth
2 Assenbly of the League of Nations in 1927 by a unani-
3 mous resolution -- unanimous in almost the same
4 language. Japan was a signatory of both of these
5 instruments."

6 The above opinion represents a conventional
7 view taken by some of the scholars of international
8 law. It is, however, far from being a real step for-
9 ward to the direction of eradicating war to establish
10 eternal peace, by solving the problem from the
11 essential nature of the law. As advocated by
12 Grotius, the establishment of international juris-
13 prudence based on justice is the first prerequisite
14 of peace. If we ignore this prerequisite and aim
15 at gaining one-sided solution by limiting our con-
16 sideration to facts which tolerate positive as well
17 as negative approaches, no amount of our efforts
18 will enable us to grasp the true foundation of
19 international peace. Unless we have basic elucidation
20 of the nature of war, the judgments of individual
21 cases will only complicate the matter.
22
23
24
25

1 The Chief Prosecutor's following passage in
2 his opening statement compels our attention in its
3 significant import:

4 "No one needs even a slight reminder to realize
5 that wars in our time are quite different from those of
6 old. Today, and far more important still, tomorrow
7 and forever hereafter, wars can be nothing other than
8 total war. Today and tomorrow all wars have no limit
9 of space or territory. This problem of peace, which
10 has ever been the desire of the human race, has now
11 reached a position of the crossroads. For the
12 implements of destruction that we already know of even
13 in what might be called primitive development, have
14 reached such proportions that only the human imagin-
15 ation at its highest development is fit to cope with
16 the realities. Our question, Mr. President, at the
17 crossroads is now literally an answer: 'To be or not
18 to be.'" (T. 386, 387)

19 Winston S. Churchill writes in his book, "The
20 World Crisis", published in 1923, as follows:

21 "The vials of wrath were full; but so were
22 the reservoirs of power. From the end of the Napoleonic
23 Wars and still more after 1870, the accumulation of
24 wealth and health by every civilized community had been
25 practically unchecked. Here and there a retarding

1 episode had occurred. The waves had recoiled after
2 advancing; but the mounting tides still flowed. And
3 when the dread signal of Armageddon was made, mankind
4 was found to be many times stronger in valour, in
5 endurance, in brains, in science, in apparatus, in
6 organization, not only than it had ever been before,
7 but than even its most audacious optimists had dared
8 to dream." ("The World Crisis" by the Rt. Hon.
9 Winston S. Churchill, First Lord of the Admiralty,
10 1911 to 1915, Charles Scribner's Sons, New York,
11 1923, p. 4)

12 There is no room for doubt that in 1923 the
13 world was much in a state as depicted by Mr. Churchill.
14 Now, after the World War II, is it possible for people
15 to think of such matter with more complacency? As a
16 matter of fact, the defeated nations are hardly pressed
17 for their efforts to gain security of peace for the
18 future. Mr. Churchill's words can be said as a warn-
19 ing to the world with the 16th Chapter of the Revel-
20 ation. It was a great reality indeed. If the trend
21 of the human race, and the opposing world powers were
22 such in 1923, the world was then compelled to find
23 itself in an irresistible swift current sweeping
24 ceaselessly toward war, rather than to promote peace
25 by restraining war. Mr. Churchill predicted a very

1 critical situation on the eve of the next war, when
2 he entitled the second chapter of his book as "Mile
3 Stones to Armageddon" and quoted the following words
4 of Cicero:

5 "Enmities which are unspoken and hidden are
6 more to be feared than those which are outspoken and
7 open." (Cicero)

8 In Europe and in America, scholars and states-
9 men were alike in giving warning to such probability.

10 In ancient Japan as well as in ancient China,
11 there existed great periods of peaceful culture.
12 I feel the necessity of touching on this, being
13 greatly moved by the profound statement of Mr. Chief
14 Prosecutor urging us to further our investigation
15 of war. Among the defendants there are some who
16 are finding the spring of their thought in those
17 ages. The most perfectly preserved literature from
18 such period of China is the Book of Chau Yi or the
19 Book of Change. The Book of Chau Yi indicates the
20 way to peace. Putting aside the consideration of
21 absolute peace, we find in the book devices prepared
22 to prevent the occurrence of war. If we read
23 "Kua" of "Shih" in the book, and go up to "Kua"
24 of "Sung" and "Kua" of "Hsu", and again further up
25 to "Kua" of "Pi", we are led to imagine the world

situation before World War II, Churchill's statement
1 can be interpreted from his quotation of Armageddon from
2 the Revelation as implying supernaturally grave signif-
3 icance of war. In the Book of Chau Yi, however, it is
4 possible to interpret it from natural causes as well as
5 supernatural. In it the World War constitutes progres-
6 sive steps taken by the world from "Chi-chi" (past)
7 to "Wei-chi" (future) in the cosmic movement. With
8 Boutroux, war is strife of combined forces of thought
9 and action. With Crile, it is revolutionary manifest-
10 ation of human destiny involved with its moral, social,
11 educational and political systems. And again with
12 Churchill, it was observed as a situation comparable
13 with the milestones to Armageddon.
14

15 Even though such war is labeled aggressive
16 and condemned as crime when judged by the sequence
17 of aggression and defense, or whatever might be
18 the decision made at the conferences of the inter-
19 national jurists as to its nature, it does not fol-
20 low, as a problem of criminal theory, that it can
21 furnish authoritative ground upon which it is pos-
22 sible to inflict punishment on those who carried
23 out lawful duties within sovereign states. Since
24 the time Churchill wrote his book, the world situa-
25

1 tion has been driving many small and large countries
2 into undesired war, through their complicated inter-
3 national relationships. They have been deprived even
4 of the freedom to avoid wars. Consequently all groups
5 of large and small states alike are equipped with
6 armaments, which are available at moment's notice
7 against possible enemies. So it is not without
8 reason to assert that we are in the midst of revolu-
9 tionary processes.

10 At the same time we must recognize that re-
11 markable efforts have been directed to seek peace.
12 The first step was made with the idea of forming a
13 League of Free Nations, motivated by the noble
14 ideal to make World War I "the war to end war",
15 and its influence was strongly felt in the Orient.
16 When the League of Nations was organized Japan
17 joined it, believing the peace of the world should
18 be established on the basic principles of free-economy
19 and democracy. The United States did not join the
20 League, but other participating countries put great
21 expectation in the League.
22

23 During the period of seclusion for 260 years
24 under the TOKUGAWA Shogunate, Japanese were a peace-
25 ful race living within islands. Japan, however,
opened its country for foreign intercourse by the

1 persuasion and pressure brought by the various
2 countries of Europe and America. The flag of the
3 Rising Sun was first raised in 1854, when agree-
4 ments were signed with Britain, America and Russia.
5 Through the MEIJI Restoration Japan had been allowed
6 to go forward as an independent nation. This can be
7 regarded as reformation for Japan, and revolutionary
8 for the world situation. Especially the introduction
9 of the revolutionary spirit from the United States
10 and France gave fresh spiritual impetus to modern
11 Japan.

12 The spirit and reality of the American and
13 French Revolutions profoundly affected the MEIJI
14 Restoration in Japan. Again Japan could not and can
15 not stand aloof from the impact of the new revolutionary
16 movements which have been sweeping the western nations
17 in the past few decades. The eruptive stages leading
18 up to the French Revolution was described by Thomas
19 Carlyle very masterly, but its scale was not big enough
20 to depict the succeeding stages of revolutionary
21 changes in the world which developed into World War II.
22 The problem of peace now at the crossroads, as
23 warned by the Chief Prosecutor, can be seen tossed
24 among the heavy waves of revolution. Japan has not
25 been second to any other country in its enthusiasm

1 Japan participated in the Washington Conference,
2 the Anti-war Treaty, and the Disarmament Conference in
3 London, and has been faithful in concurring with other
4 powers in the joint effort to maintain peace. Even
5 when Japan faced the closed-door policy of the American
6 continents, to a certain extent, and also the refusal
7 against Japan's peaceful advance toward the Asiatic
8 Continent, she preserved her perseverance and tolerance.
9 She has been most eager to keep the stipulations of
10 agreements, pacts and security treaties. But she
11 could not but feel the encroaching of the world
12 powers upon her, which pressed her back step by step
13 into her own island Empire. Since her emancipation
14 from her seclusion, Japan did not forget to maintain
15 her independence, small as she was, by following the
16 lead of new cultures in Europe and America. The
17 Japanese people have been strong in defending justice,
18 and second to none in valuing the spirit of humanity,
19 and they had to stand resolutely to maintain peace,
20 as a small nation, in the midst of the vortex of
21 revolution and at the cross-currents of Western
22 civilizations. Under such circumstances civil officials,
23 military officers as well as statesmen of Japan were
24 dismayed to find themselves in a tight position in
25 which deciding their own course of action, with their

own free will, was not possible.

1
2 With the complication of foreign affairs,
3 the independence of Japan, and the existence of the
4 Japanese people has hourly been exposed to crisis.
5 It has been said that in 1935 the number of inter-
6 national agreements throughout the world reached
7 no less than twenty-five thousand, but they could
8 not relieve the general unrest of the world. William
9 McDougall warned of the chaotic conditions of the
10 world viewed from the political and economic problems
11 of Europe. He disapproved as ill-founded the views
12 maintained by Spengler, who wrote on the downfall
13 of Western civilization and published a pessimistic
14 view in 1921. Not much difference, however, can be
15 found between these two scholars in their heated
16 arguments directed against the unrest felt in Western
17 civilization. McDougall dealt with economic problems
18 in his book World Chaos, in which he asserted that in
19 order to restore the balance of our civilization, in
20 order to adjust our social, economic and political
21 life to the violent changes which physical science
22 has directly and indirectly produced, we need to have
23 far more knowledge (systematically ordered or scien-
24 tific knowledge) of human nature and of the life of
25 society than we yet have in Europe. (William McDougall's

1 "World Chaos," Kegan Paul, Trench, Trubner & Co.
2 Ltd., London 1931, p. 59) As an actual case he
3 presented the economics and commented on the points
4 which he felt doubtful. In dealing with this economics,
5 which has the longest history and the most notable
6 schools among other branches of sciences, and also
7 the closest relationship with our daily life, he
8 said:

9 "Will any one affirm that Economics
10 is a science: that it is anything more than
11 a frightful mass of statistics and highly
12 questionable theories? The supreme test
13 of a science is its power of prediction.
14 It would be too much to say that the pre-
15 dictions of the economists are always wrong;
16 is it not merely because, among a multitude
17 of predictions, some must hit the mark ac-
18 cording to the law of chance?" (Ibid. p. 70)

19 It has been the subject of frequent warnings
20 by the informed people of the world, that revolutions
21 in economics, industry, science and politics are
22 striving in their own ways in this troubled world.
23 They are, however, far from being successful in
24 realizing the termination of war. Could there be
25 any significant reason for this failure?

1 War is treated as the most important national
2 affair by any independent sovereign state, and other
3 affairs such as economics, industry, science, and
4 politics are marshalled to contribute to prepared-
5 ness for war. Once a war breaks out between powers
6 several millions of lives and several billions of
7 wealth will be exposed to destruction. It is usually
8 the case that the endeavours to find peaceful settle-
9 ment are repeated to the last minute. Consequently
10 even though an ultimatum becomes only a matter of
11 formality, the opposing country is never left in a
12 defenseless state.

13 If we could go a step further than a League
14 or United Organization, and form a body of peaceful
15 free people, with the strong support of the leading
16 sovereign powers of the world, we could probably stop
17 war. But is it really effective to terminate war
18 by inflicting punishment, by new law, on those people
19 who were engaged in an inevitable war or hostile
20 action, as responsible persons in a state or in an
21 international relationship? And again, is it really
22 a desirable step toward the establishment of peace
23 by adding new punishment to those people who acted
24 legitimately at the exigencies of their own state
25 according to their responsibilities in diplomatic and

administrative service, outside the military purpose?
1 About aggressive war, if the judgment is made only
2 by the victorious nations against the defeated nations
3 it is nothing but a one-sided decision.
4

5 Unlike the case of Cortez's conquest of the
6 American Indian, or Pizarro's attack on the coast of
7 South America, in the present world, countries enter
8 into agreements, and treaties and confront each other
9 with considerable armaments. There is possibility
10 of resorting to hostile actions, when no amicable
11 settlement can be reached in the difference of the
12 interpretation of agreement or treaty. Another
13 possibility is the hostile action caused by the
14 collision between territorial guards or garrisons even
15 if one party was forced, by defect, to own their
16 action as aggression, that cannot satisfy the require-
17 ment of judicial justice. As a lawsuit according to
18 judicial justice, victorious nations as well as
19 defeated nations must be judged alike as defendants.
20 No other way will satisfy the requirement of justice.
21 In warfare victors are not exception to commit
22 slaughter and destruction. Not a few examples might
23 be cited in which the number of those committed by
24 the victor exceeded those of the defeated. Various
25 countries enter into agreements and treaties with

1 each other to ensure their independence and existence,
2 which is based on the fundamental requirement of jus-
3 tice of the human race. When this fundamental justice
4 becomes the standard of judgment in dealing with the
5 international cases and troubles, a fair and dependable
6 investigation can be expected by the parties con-
7 cerned. We must admit, however, that there exists
8 struggle for existence internationally as well as
9 individually.

10 Nobody likes war. It has to be exterminated
11 sooner or later. Is it not possible to make war it-
12 self a crime? When we do not make war a crime, and
13 make war of aggression a crime, with its accompanying
14 actions such as planning, preparation, starting and
15 execution of war itself, and if this be recognized
16 as the principle of international jurisprudence, then
17 it is imperative that the discrimination between
18 aggressive war and non-aggressive war be definitely
19 indicated. Such a vague phrase as "for the execution
20 of the national policy" does not show any definite
21 demarcation, and "deliberated war", fails to carry a
22 precise sense, as no country is without fully prepared
23 armaments against possible enemies. When Manchuria
24 was called "the life line" of Japan, there was another
25 expression which regarded the Rhine as the life line of

1 North America. In short, when all large and small
2 countries are opposing each other for their independence
3 and existence, and when it is possible for any oppos-
4 ing nations to prepare openly for the conflict for
5 their existence, there can be no one-sided preparation
6 which will make that particular nation an aggressor.

7 Japan has been eager to introduce culture
8 from other countries. She also placed emphasis on
9 diplomatic relation, and strived to observe, most
10 conscientiously, agreements and treaties entered
11 into with other nations. As it was right after the
12 opening of our country, undesirable misunderstanding
13 apt to be entertained by the reactionists was much
14 feared. Ratification of treaties was given different
15 treatment from the enactment of internal laws, and
16 the former was rested in the authority of the sov-
17 ereign. Japanese nationals were given the right to
18 travel to other countries, and also right of residence
19 and commerce, but it was not until 1898 that extra-
20 territoriality was finally abolished. At the time
21 of starting the Sino-Japanese War, Japan had not
22 reached the stage of waging aggressive war. The
23 same thing can be said for the Russo-Japanese War.
24 Through this period Japan's action was recognized
25 by international treaties, and she recovered good-

1 neighborly relationship with China and Russia; this
2 has been a historically established fact with general
3 approval. Since then radical changes have been
4 brought about in the international relationship of
5 the world, but Japanese diplomacy has continued its
6 efforts to promote justice and peace, which fact is
7 evident from the formation of the Anglo-Japanese
8 Alliance, and the action taken by Japan at the time
9 of World War I, taking side with the Allied Powers
10 including France, America and Britain. For the
11 International Court at the Hague, Japan showed con-
12 tinued support motivated by a peace-loving spirit.

13 Militarism is not an inherent trait in
14 Japanese, and only acquired in comparatively recent
15 years, by following the examples shown by Western
16 nations, as pointed out by Bertrand Russell. We
17 have no counterpart of imperialism in Japan, al-
18 though we have "O-do" or royal sovereignty, which
19 has a very ancient tradition.

20 II. Justice and Responsibility.

21 The establishment of justice is one of the
22 greatest issues of today. When Justice is clearly
23 defined throughout the world, the problem of respon-
24 sibility will also be solved rightly. In the present-
25 day world, for good or for evil, and independent

1 sovereign state sets limits to her people in their
2 relation with other countries. Justice within a
3 country is, therefore, made real as a function of
4 individual citizens in the structure of the nation,
5 and that constitutes the order of the state. When
6 individuals belonging to such a state face a critical
7 and pressing international situation, and take cer-
8 tain actions required by the function they assume
9 in the state on the conviction that their state is
10 exposed to danger which jeopardizes her independence
11 and existence, such actions can hardly constitute
12 criminal offenses.

13 In ancient times Japanese culture sought
14 the simple and peaceful life. It sought the truth of
15 human existence and action in the simple life --
16 something which closely resembles the moral precepts
17 expounded in Lao-Tze's Tao-Teh-King of ancient China.
18 As this Chinese philosopher said, "Chien-su-pao-p'u"
19 or "Simple views, and courses plain and true" is the
20 essence of the peaceful and simple life, and the
21 realization of truth itself. After JINMU-TENNO, the
22 first Emperor, the Japanese culture departed from this
23 primitive simple life and proceeded into a new and
24 politically more complicated stage. The Nippon Shoki
25 or the Chronicle of Japan was completed in 720 A.D.,

1 which corresponds to the 1,380th year after the
2 Accession of the Emperor JINMU, and it means that the
3 history of the era of that first Emperor was written,
4 in classical Chinese, 1,380 years after his time. In
5 this Chronicle an edict of the Emperor JINMU was
6 recorded, a part of which reads:

7 "Found the Capitol embracing the
8 universe, and make a house by covering the
9 eight ties (which reach to all sides)."

10 "Hakko-I-u", which is found in the records of
11 this Tribunal, represents the Emperor's edict in a
12 shortened form, and only means "to make a house" and
13 does not signify to exercise control or reign over
14 someone.

15 Sometimes "Hakko Ichi-u" is used, as re-
16 corded in the evidence, instead of "Hakko I-u."
17 "Ichi-u" means one house, and this restrictive ad-
18 dition of figure "one" may seem to signify the as-
19 similation of plural figures into a unit. But in
20 reality it means that a vast area is spontaneously
21 developed into a house, and is a figurative descrip-
22 tion of the diffusion of peace far and wide. Origin-
23 ally, this "Hakko Ichi-u" was not a Japanese expres-
24 sion, but was introduced from China. The authoritative
25 source of this phrase "Hakko" or "Pa-hung" in Chinese.

1 can be cited in the "Hwai-nan-tzu", a classic in
2 China, which is a kind of encyclopaedia, written about
3 two centuries B.C. at the beginning of the Ch'in
4 Dynasty, when their thought and literary forms had
5 already attained a certain degree of elaboration.

6 The Chronicle of Japan is a history compiled by
7 Imperial mandate making use of such literary embel-
8 lishment from China to record the events and achieve-
9 ments during the eras of the Emperor JINMU and others.
10 After that time other instances are found in which
11 this phrase "Hakko" was used through the Six Dynasties
12 and the Sui and T'ang Dynasties, in China. These two
13 Chinese characters do not signify the simple life, but
14 they come to mean peaceful life of the countless
15 masses of the people.

16 Some of the defendants tried to explain the
17 ideal of the modern usage of "Hakko Ichi-u" or
18 "Hakko I-u", and these words can only mean the
19 diffusion of peace, and not territorial aggrandize-
20 ment, which may result in a negation of the heritage
21 of the simple life so inherent in the Japanese culture.
22 throughout the ages. This phrase "Hakko" or "pa-hung"
23 has another source in the Book of Chou Yi, in which
24 a phrase "pao-huang" is found in "Kuo-92" of "T'ei".
25 Hus-Shi-Chi, a Chinese scholar in the Ch'ing Dynasty,

1 interpreted this phrase "pao-hung" as embracing vast-
2 ness, and vastness signifies the zeal of a sage for
3 peace. In Chinese "huang" means "hung" (both pro-
4 nounced "ko" in Japanese) so it is possible to say
5 "pao-huang" or "Hakko" in Japanese, which means a
6 vast and all-embracing peaceful mind, and has no room
7 for territorial ambition in it.

8 In the chapter of Hsi-tzu-sheng-ch'uan in
9 the Book of Chau Yi is found a passage: "Yi-chien
10 erh T'ien-hsueh-chih-li-te-i", which means, "with
11 simplicity the truth under the heaven can be
12 elucidated," and closely resembles in significance
13 the passage from Lao Tze, "Chien su pao p'u" (simple
14 views, and courses plain and true) as quoted above.
15 The second characters of these two passages are
16 frequently combined into one phrase and form "chien-
17 su" or "Kan-so" in Japanese, with the meaning of
18 "simplicity". This thought of the Yin and Chou
19 Dynasties in China agrees with the ideal of Ancient
20 Japan. If we add purity to it, the result will reach
21 to the high standard set by Jesus in the Sermon on the
22 Mount, "Blessed are the pure in heart, for they shall
23 see God." Japanese Shintoism is said to have the
24 same central thought. The Nippon Shoki or the Chronicle
25 of Japan was completed in the 4th year of Yoro during

1 the era of the Emperor GENSHO (720 a.d.), when the
2 study of Chinese characters in Japan had made a con-
3 siderable advance, and the Chinese characters, then,
4 served as the treasure-house to store the spirit of
5 Japanese tradition. We can understand from such
6 historical background why the writer used a Chinese
7 phrase "pa-hung" ("Hakko") from the Hwai-nan-tzu, to
8 describe that simple and fresh culture. The "Hakko"
9 describes the ideal of "O-do" or royal sovereignty
10 as it does in the books of Lao-Tze and the Chou Yi.
11 In the "Yuan-tao-hsun" the opening chapter of the
12 Hwai-nan-tzu, the various aspects of ancient China are
13 discussed. According to the physics of that time
14 heaven was considered round; and the earth square. In
15 that chapter a phrase "pa-huang chiu-yeh" ("Hakko
16 Kyuya"), of which, according to a commentator, "Pa-
17 Huang" means eight connecting cords of the heaven,
18 and "chiu-yeh" (Kyuya) represents the eight directions
19 and the center. In the same chapter is also found
20 a passage, "Wei yu-chou erh change san-kuang" (Con-
21 necting together "yu" and "chou" - universe; and make
22 clear "san-kuang" - the sun, the moon and the stars).
23 A commentator annotated that "yu" stands for the
24 four directions and above and beneath, "chou" for the
25 past, present and future. Accordingly "yu" (Japanese

1 pronunciation "U") or its combination "i-u" (to form
2 or make a "U") corresponds to Kant's idea of time and
3 space as forms of intuition and is far from having
4 any relation with the ideas of territory or subjugation.
5 According to Japanese renderings "Hakko" is
6 also read as "amenoshita" and "U" as "i-c". In the
7 evidence presented to the Tribunal the former is
8 literally translated into "world", and the latter
9 into "roof" or "family", but these should not be
10 interpreted in the literal sense, and require thorough
11 understanding of their thought significance, which
12 means propagation of peace, without having any con-
13 notation of aggression.

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1 According to the documentary evidence, there
2 might be some defendants, who used this "Hakko ichi-u"
3 consciously, with the background of the ancient thought
4 in mind; or there might be some who resorted to this
5 as a slogan to express the ideal of peace common to
6 the ancient and the modern world.

7 The advocacy of the co-prosperity sphere of
8 To-a (East Asia) or of Greater Asia, is the advocacy
9 of a cultural ideal and thought. It is a peaceful
10 thought and a humanitarian ideal which stresses the
11 idea of co-existence. In "O-do" the idea of "bellum
12 omnium contra omnes" as asserted by Hobbes, is non-
13 existent. One hundred and seventeen years before the
14 compilation of the Chronicle of Japan, Prince Shotoku's
15 "Seventeen-Article Constitution" was established in
16 604 A.D. which was the crystallization of the idea of
17 peace then existing. To cultivate the peaceful idea,
18 Japan introduced Confucianism in the reign of Emperor
19 Ojin, and in the reign of Emperor Kimmei (552 A.D.)
20 Buddhism came to Japan. In my belief Nestorian
21 Christianity also came to Japan, and it is believed
22 that it was partly assimilated into Buddhism and partly
23 into Shintoism. These were religions which emphasized
24 the peaceful thought, and Shotoku's "Seventeen-Article
25 Constitution" is an important document which codified

such ideals of peace.

1 I must refrain from going further into this
2 important aspect of the case, but I wish to emphasize
3 that the idea of the Greater East Asia Co-Prosperity
4 Sphere is nothing but the ideal aiming to establish
5 the independent existence of Asia, culturally and
6 economically, based on the idea of peace which orig-
7 inated in Asia, and flowed into Japan for consummation.
8 The terminology is comparatively new, but its basic
9 idea can be traced back to 1926, when the All-Asia
10 Society was founded by Japanese people to promote a
11 movement to awaken Asiatic races. This was understood
12 as the movement for the freedom and peace of the Asiatic
13 race rather than for the Japanese people. In 1928 we
14 find such expression as the Doctrine of the Greater
15 Asia (Dai-Ajia Shugi). The Doctrine of the Greater
16 Asia, promoted by Sun-wen, the leader of the Chinese
17 Revolution, had practically the same contents as the
18 above.
19

20 As stated above, the Prince Shotoku adopted
21 the ideals of peace developed in India, China and
22 Japan in his "Seventeen-Article Constitution." The
23 figure 17 constitutes the combined number of 9 for
24 heavens and 8 for earth in Ancient China, and symbol-
25 izes the harmonious order of heaven and earth. The

Meiji Constitution followed the forms of European
1 examples, but in spirit it was founded on the ideal
2 of peace of Japan. Kentaro KANEKO, a private secretary
3 of Hirobumi ITO, was sent to America and European coun-
4 tries with the draft of the constitution, to seek
5 criticisms of experts and scholars. KANEKO used his-
6 torical expression in explaining the draft, but what
7 he meant by history was not historical records or
8 annals of successive events. What he meant was, prob-
9 ably, the true aspect of the revelation of the ideal
10 of peace, since the foundation of Japan, through the
11 successive developments in her internal and interna-
12 tional relationships.

14 III. Peace and Wang-Taoism.

15 In 1925 I had an occasion to submit to Euro-
16 pean academic circles an essay on Wang-tao and Pa-tao
17 (Royal Sovereignty and Authoritative Sovereignty) as
18 a reference in the study of world peace. I should
19 like to append it to the present chapter as defense
20 data. It is a breif entitled "Comperative S₁udy of
21 Wang-tao and Pa-tao," with special reference to:
22 I. On the Royal Path (the whole), and II. On the
23 Pa-taoism and the Law therein (from the beginning
24 to the end of the Pa-taoism in the age of the Chou
25 dynasty).

In view of the fact that the International
1 Military Tribunal for the Far East, unlike a national
2 judicial trial, is the only one for realizing the lofty
3 ideals of world peace and justice in the future, de-
4 fense counsel must not forget that as evidence for the
5 defendants' acts, not merely punishable factors, but
6 the question as to how the defendants should be treated
7 in connection with their responsibilities as official
8 and private persons is involved.

9
10 Evidence for the character of each defendant
11 is not permitted, nor is it absolutely necessary. On
12 the other hand, it must be made clear what kind of
13 culture the defendants generally have acquired and at
14 what level of international life they stand. Their
15 qualification for observing international law must
16 also be investigated.

17 Students of international law who strive for
18 peace have come to pay attention to the fact that
19 merely assuming as the object of international law
20 a nation or state as a mere group of people will
21 hardly hasten the realization of peace; therefore,
22 the individual should be made the object of inter-
23 national law. An anti-war pact is no doubt a device
24 by them. So is the book by Otfried Nippold of Zurich,
25 Switzerland another instance of this. He says:

1 "They have recently given the new name
2 of a democratic international law in the
3 form which I have here described as a work
4 worth striving for. This name is not im-
5 proper. The true international law aims at
6 the control of rights and nothing else is
7 really democratic according to its essence.
8 It comes from the idea of equality of states
9 however small or great. It has no room for
10 imperialistic attempts. It places right
11 above might and fights against militarism."

12 (Formation of International Law After the
13 World War. Zurich. 1917.)

14 However, the peace efforts of the groups of
15 great and small nations in the world failed to realize
16 the ideal of equal rights, and preparations on the part
17 of international law for preventing the second World
18 War were still incomplete.

19 Nevertheless, the rule of law (right) over
20 power (might) and the ideal of equal rights are related
21 to the idea of liberty and equality which existed about
22 the time of the French Revolution. The present moment
23 has seen further progress; as an ideal, the tendency
24 is to shift from establishing justice for the individ-
25 ual on the basis of sincerity and virtue to the process

of realizing peace. May not international law develop, no more as an indirect one addressing the people across the barriers of the State, but as peoples' law or world law immediately securing the free sustenance of each individual? Cold war, economic war, or military war, or military war motivated by a hostile sentiment must be renounced. In this respect the newness or oldness of an idea is not to be judged from the modernity or antiquity of its age.

I am of the opinion that Wang-taoism may be styled the forerunner of Nippold's idea. This and the newest type of democracy have considerably approached each other. Most of the defendants are men of the Wang-tao-ist culture. Unless the question of criminal responsibility be investigated with this point in view, may I not say it will go astray?

Further details of Wang-taoism I shall leave to the data appended for reference. As my reason why the defendants' responsibility could not be called to account, I will now quote a few lines from Will Durant's "Adventures in Genius." As Confucius' system of culture, Durant has selected a chapter from Tai-hsiao (Higher Education).

"The illustrious ancients, when they wished to make clear and to propagate the

1 highest virtues in the world, put their
2 states in proper order. Before putting
3 their states in proper order, they regu-
4 lated their families. Before regulating
5 their families, they cultivated their own
6 selves. Before cultivating their own selves,
7 they perfected their souls. Before perfect-
8 ing their souls, they tried to be sincere
9 in their thoughts. Before trying to be
10 sincere in their thoughts, they extended
11 to the utmost their knowledge. Such inves-
12 tigation of knowledge lay in the investiga-
13 tion of things, and seeing them as they
14 really were. When things were thus inves-
15 tigated, knowledge became complete. When
16 knowledge was complete, their thoughts be-
17 came sincere. When their thoughts were
18 sincere, their souls became perfect. When
19 their souls were perfect, their own selves
20 became cultivated. When their own selves
21 were cultivated, their families became
22 regulated. When their families were regu-
23 lated, their states came to be put into
24 proper order. When their states were in
25 proper order, then the whole world became

1 peaceful and happy." (Adventures in Genius,
2 Simon and Schuster, New York 1931, p. 6-7)

3 This is the primer of Wang-taoist pacifism.

4 The defendants have been under the influence
5 of one of the greatest thinkers of twenty-five centuries
6 ago. They are innocent men who act and live under
7 reason. It is inconceivable that they conspired to
8 commit the wrongs alleged in the Indictment, or that
9 if set free they would conspire aggressions again and
10 again.

11 THE PRESIDENT: Have you completed what you
12 have to say?

13 DR. UZAWA: This is the conclusion, sir.

14 THE PRESIDENT: We will adjourn until half-
15 past nine tomorrow morning.

16 (Whereupon, at 1600, an adjournment
17 was taken until Wednesday, 3 March 1948, at
18 0930.)
19

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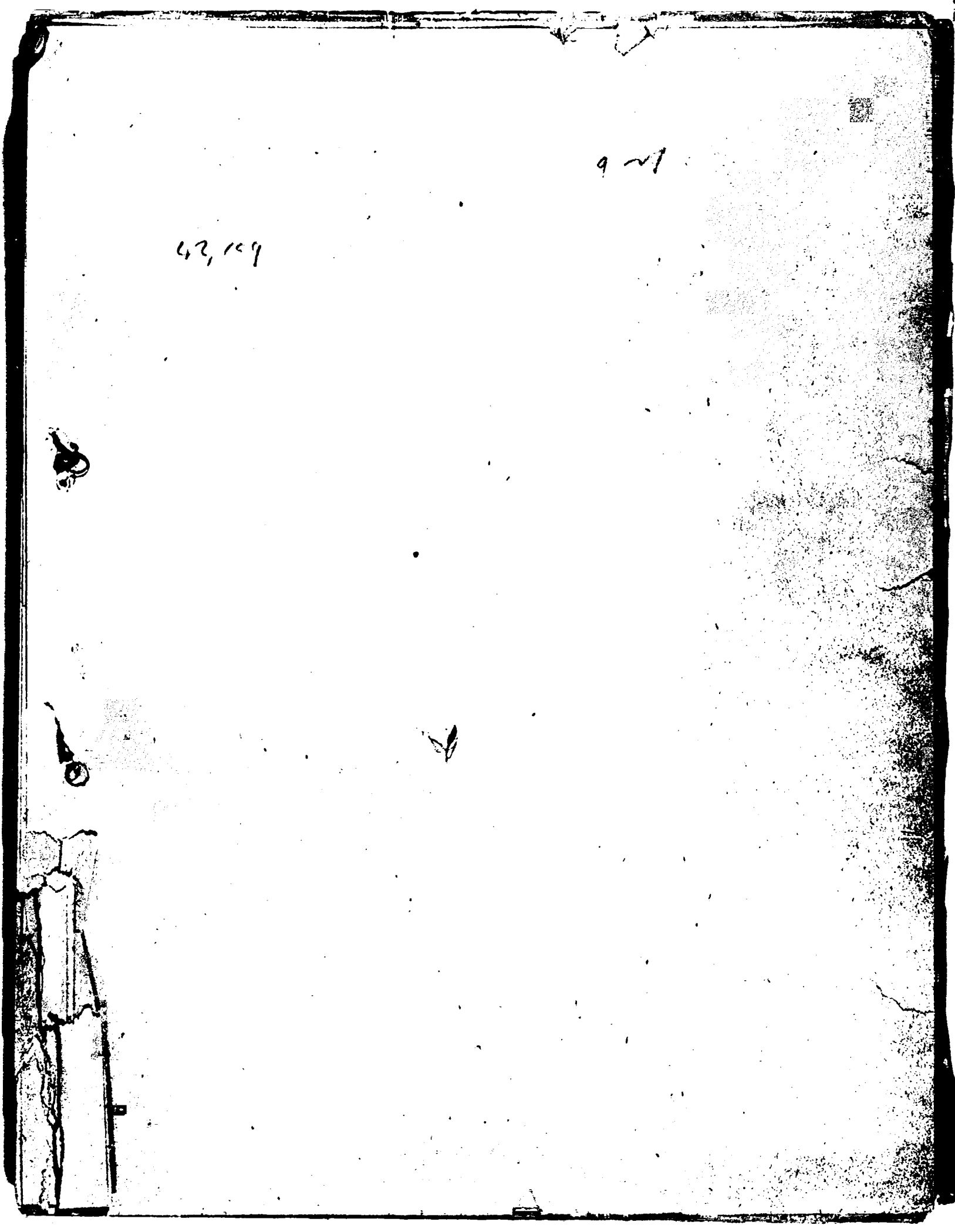
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1 Tuesday, 9 March 1948

2 - - -
3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting.

13 For the Prosecution Section, same as before.

14 For the Defense Section, same as before.

15 - - -
16 (English to Japanese and Japanese
17 to English interpretation was made by the
18 Language Section, IMFFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI and UMEZU, who are
5 represented by counsel. The Sugamo Prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 Mr. Lazarus.

10 MR. LAZARUS: Mr. President, the corrections
11 suggested last night have been made. The translators
12 have those corrections, and Dr. KANZAKI is prepared to
13 read the corrected manuscript.

14 THE PRESIDENT: Dr. KANZAKI.

15 DR. KANZAKI: (Reading) Mr. President and
16 Members of the Tribunal, I wish to show on behalf of
17 the defendants that they are not guilty of the alleged
18 offenses concerning the China Affair.

19 The China Affair started from an incident which
20 took place at 11:40 p.m. July 7, 1937, in which a unit
21 of the Japanese forces, then maneuvering in the vicinity
22 of the Lukowchiao, at a spot commonly called Marco Polo
23 bridge, was illegally fired upon by Chinese troops
24 stationed at Lungwangmiao. (A. T. 20,532, 20,619.)
25 (A. T. 20,532, 20,619.)

The stationing of Japanese troops in North
1 China was executed according to Article IX of the joint
2 note concerning the North China Incident in 1901 (the
3 Boxer Rebellion) and Article IX of Protocol concerning
4 the Boxer Rebellion. (B. Ex. 247, T. 3314.)

5
6 Japan's right to perform such maneuvers had
7 been recognized in the notes exchanged between Japan
8 and China concerning the retrocession of Tientsin in
9 1902. The above notes run as follows:

10 Foreign troops shall possess the rights to
11 perform maneuvers of target practice. There shall be
12 no need of notice to the Chinese authorities, except
13 when ball cartridges or loaded shells are used.

14 (A. Ex. 2483, T. 20,596.)

15 On the night of the event a unit of Japanese
16 forces was performing a preparatory exercise for a
17 coming inspection, and, as a matter of course, the
18 Japanese troops used blank shots at the time, carrying
19 no ball cartridges. Accordingly, the performance of
20 such exercises was in no way a violation of the agree-
21 ment whatsoever.

22
23 As clearly testified in the evidence the
24 Japanese forces were in the following conditions:

25 1. The main force of the Japanese Garrison

(B. Ex. 247, T. 3314.)

A. Ex. 2483, T. 20,596.)

1 Army at Peiping was staying at Tungchow preparing for
2 the inspection.

3 2. The Second Infantry Regiment stationed at
4 Tientsin was staying at Shanhaikwan for the same purpose.

5 3. Lt. General TASHIRO, the North China
6 Garrison Army commander, was so seriously ill that he
7 was unable to take command of his forces. (He died a
8 short time later.)

9 4. Brigade Commander Major General KAVABE,
10 Shozo, was staying at Shanhaikwan to inspect the Second
11 Regiment, leaving Peiping, his regular post.

12 5. At Tientsin, the base of the Japanese
13 Garrison Army, the supplying of arms and munitions was
14 impossible.

15 Such being the case, the Japanese forces were
16 by no means in condition favorable for provoking an
17 incident, whereas the Chinese Army had already taken
18 up positions along the bank of the Yungcheng River,
19 marching its forces of considerable strength up to
20 that line. Considering these facts there was no reason
21 to believe that the Japanese troops should have ini-
22 tiated an attack upon the Chinese forces. It is
23 undoubtedly evident that the sudden and illegal attack
24 of firing by the Chinese troops was really surprising
25

1 to the Japanese. (A. Ex. 2487, T. 20,619-20,620;
2 Ex. 2479, T. 20,527.) Besides it is also quite clear
3 from the evidence that Japan had never adopted any
4 plan for waging war upon China. (B. Ex. 2479, T. 20,527;
5 Ex. 2487, T. 20,615; Ex. 2488, T. 20,870.) Then, why
6 did the Chinese Army take such a defiant action? The
7 reason will be self-evident, if one looks into the
8 development of the anti-Japanese campaign and the
9 communistic movement in China.

10 At first the Chinese Government made efforts
11 to suppress them, but of late their way of boycotting
12 Japanese goods had become more and more organic and
13 they were conducted on a larger scale, transformed into
14 a general popular movement; consequently the Chinese
15 Government found it impossible to exercise complete
16 control over the movements, and at last the government
17 itself began to assume the leadership of the movement.

18 (A. Ex. 63, T. 20,985; Ex. 2510, T. 21,023, 21,024;
19 Ex. 2511, T. 21,040; Ex. 2512, T. 21,043.) It was
20 the development of the communist movements in China
21 that spurred and boosted this anti-Japanese campaign,
22 causing such a radical transformation of the movement

24 (A. Ex. 2487, T. 20,619-20,620; Ex. 2479, T. 20,527.
25 B. Ex. 2479, T. 20,527; Ex. 2487, T. 615; Ex. 2488,
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25 T. 20,870.
A. Ex. 63, T. 20,985; Ex. 2510, T. 21,023, 21,024;
Ex. 2511, T. 21,040; Ex. 2512, T. 21,043.)

that it became a serious menace to Japan.

1 In September 1920 a meeting was held at Shanghai
2 in preparation for the establishment of the Chinese
3 Communist Party under the leadership of Voichinsky,
4 the director of the Comintern for the Far East, and
5 later in May 1921 the party was formally organized.
6 The period between 1924 and 1927 was the age of the
7 joint campaign of the Kuomintang and the Chinese Com-
8 munist Party, which was started from Sun Ihsien's pro-
9 communist policy. (B. Lytton Report, Chapter I.)
10

11 But later the communists became estranged from
12 the Kuomintang and continued to carry on their original
13 movement standing in opposition to the Kuomintang.
14 (A. Ex. 57, Lytton Report, Chap. I, Outline of Recent
15 Developments in China.)

16 In December of the following year, 1936, there
17 happened the Sian Incident, and the Communists forced
18 Mr. Chiang Kai-shek to determine to make thorough pre-
19 parations for the offensive against Japan.
20 (A. Ex. 2,514, T. 21,104-21,106; Ex. 2,374, T. 18,426-
21 18,427.)
22

23 Moreover, Chinese Communist campaigns were not

24 B. Lytton Report, Chapter I.

25 A. Ex. 57, Lytton Report, Chapter I.


 A. Ex. 2,514, T. 21,104-21,106; Ex. 2,374, T. 18,426-
 18,427.

1 only a mere ideological agitation, but also movements
2 of military, political and diplomatic significance.
3 According to their plan, they attempted at first to
4 consolidate their sphere of influence in North China, ⁵
5 then advance forward into other districts to divide
6 China in two -- the Red autocratic North China and
7 the democratic South China -- and finally Sovietize
8 the whole land, completing the destruction of democratic
9 China. (A. Lytton Report, Chap. I.) And this brought
10 about serious consequences in the existence of Japan.
11 The characteristics of Chinese communist movements were
12 remarkably different from those of other countries.
13 The Chinese Communist Party attempted to put farmers
14 under arms according to the directive of the Comintern
15 in 1927. This armed Sovietizing move aimed at the
16 development of the movement through guerilla wars.
17 The process will be described below. At first the
18 "agents" smuggled themselves into peaceful districts,
19 and furnished outlaws in towns and villages as well as
20 bandits and mounted brigands with arms. Then entering
21 towns and villages under disguise, they set houses on
22 fire, looting and destroying the whole area. They
23 massacred masses of people, bringing forth a world of
24
25 A. Lytton Report, Chap. I.

1 darkness and terrors. And on the other hand, they con-
2 ducted ingenious propaganda of communism, forcibly
3 creating organizations of people, furnished with arms.
4 The communists aimed at the armament of the whole people.
5 At peace time, those people were engaged in farming and
6 in emergency they took arms to fight. When punitive
7 forces arrived, they concealed all their arms, trans-
8 forming themselves into good citizens. So punitive
9 forces were often at a loss to distinguish good citizens
10 from those bandits. (A. Ex. 2479-A, T. 21,703; Ex. 57,
11 Lytton Report, Chap. I.) When red troops were to eve-
12 cuate from their occupied area, they adopted their
13 favorite tactics commonly called "Kung chih-ching yeh,"
14 (Tn: "Clear the Room, Sweep the Field") causing all men
15 and all things in the area to disappear from sight.
16 This brought about horrors indescribably terrible and
17 severe. Their politics of fraud, intrigues and horrors
18 threatened us beyond measure.

20 The Chinese Government fully cognizant of the
21 dangerous nature of communistic movements had endeavored
22 to stamp them out. (A. Lytton Report, Chap. I.)
23 General Chiang Kai-shek had made his best effort for
24 exterminating the Red forces. But in December, 1936,
25 A. Ex. 2479-A, T. 21,703; Ex. 57, Lytton Report,
Chap. I.
A. Lytton Report, Chap. I.

1 he was led into a trap of the intrigue of the Communist
2 Army. He was arrested at Sian and compelled to agree
3 to form an anti-Japanese front by the joint campaign
4 of the Kuomingtung and the Communist Party.
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After the Sian Incident their anti-Japanese movement changed its character in three points:

Firstly, anti-Japanism became an instrument of national policy. As stated above, anti-alienism had long been rooted in the minds of the people and anti-Japanese movements had been continued persistently. Before the incident, however, they took the shape of a popular movement, while the Chinese Government had been in a position to control them. But after adopting anti-Japanism as a national policy in the wake of the formation of anti-Japanese front by the joint campaign of the Kuomintang and the Communist Party, the government actually and formally took the leadership of anti-Japanese popular movements, placing itself in the fore-front of the campaign.

(A. Ex. 57, Lytton Report, Chap. VII, T. 20904, 20907). Prior to this, although not a few troubles were raised between Japan and China, these two countries still maintained their friendship. But since China adopted anti-Japanism as its national policy, their friendly relations were broken by China.

Secondly, armed forces were used in the movement. Needless to say, it was utterly unreasonable that such movements should be attended by riots. A. Ex. 57, Lytton Report, Chap. VII; Tr. 20904, 20907.

1 But the Communist Party and the Kuomintang began to
2 make preparations for a war against Japan, adopting a
3 policy of excluding Japan by armed force and on the other
4 hand they launched vigorous and extensive anti-Japanese
5 propaganda. This meant nothing but a challenge to
6 Japan without a declaration of war -- a special situa-
7 tion which could not be explained by general rules of
8 international law.

9 Thirdly, further progress was made in communist
10 movements.

11 As the result of the Sian Incident General
12 Chiang Kai-shek compromised with the Chinese Communist
13 Party, his old enemy. But he agreed with Communist
14 Party on the condition that communistic movement should
15 be put to an end, so that China might not be sacrificed
16 in the interests of communism.

17 However, as declared openly by the Chinese
18 Communist Party, that joint campaign was a temporary
19 expedient arising at the formation of the joint anti-
20 Japanese front. And, the fact is, the Communist Party
21 intended to establish a free sphere for its movement
22 under the cloak of joint front. That is to say, neither
23 the Chinese Communist Party nor the Chinese Red Army
24 actually desisted from conducting their communist move-
25 ments in accordance with the above condition, but on

the contrary the formation of the joint campaign
1 gave further chances for development of the movement.

2 Before that time the communists were circumscribed by the pressure of the government in their
3 movement. But after the agreement with the government,
4 being relieved of such obstacles, they could secure
5 the wider sphere for their activity. (A. Ex. 2547, T.
6 21556 - 21557).
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9 They were given many more chances for infusing
10 their thoughts deep into the hearts of the people
11 through anti-Japanese propaganda seasoned with communism. (B. Ex. 2547, T. 21549).
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25 A. Ex. 2547, T. 21556 - 21557.
B. Ex. 2547, T. 21549.

1 The area which the Chinese Communist Party
2 had attempted to make subservient to their purpose
3 was the western basins of the Yellow River and the
4 Hwai River which extended from Sian up to the northern
5 part of Chiangsoo Province, forming the so-called
6 "Penetration Road" of the branch organizations of
7 the Soviet Communist Party. And before that time the
8 Chinese Communist Party had been pressed upon by the
9 Kuomintang Army. But now the whole area which the
10 communist had already encroached upon came into their
11 sphere of influence with the connivance of the
12 Kuomintang Government, and they found opportunity
13 to make a gradual advance into other districts. And
14 this attempt was realized. The Fourth Army of the
15 communistic group, which had been showing activity in
16 the narrow zone on the border of Chiangsoo-Hsichiang
17 Provinces, succeeded in widening their sphere both
18 northward and southward, which extended from North
19 China in the North to the southern basin of the
20 Yangtse River in the South.
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22 And especially the Eighth Red Army made a
23 remarkable advance in North China.

24 The Chinese Communist Party had its "cells"
25 all over North China, and it was successful in infus-
ing their thoughts especially in the minds of students.

1 The principal aim of the Kuomintang Commu-
2 nist joint campaign lay in anti-Japanism.

3 The development of these movements actually
4 ran counter to the security of Japan. And the Chinese
5 Communist Army extended its influence as mentioned
6 above, leading the van of the armed anti-Japanese
7 movement which declared war against Japan. Such a
8 remarkable growth of the Chinese Communist Army was
9 not merely a serious menace to Japan but also a
10 deplorable matter to China herself, because the
11 termination of the anti-Japanese war would mean
12 nothing but the end of the Kuomintang-Communist joint
13 campaign; consequently the extension and consolidation
14 of the influence of the Chinese Communist Army, in its
15 area as well as in its nature would jeopardize the
16 unity of China as a democratic state. This is clearly
17 seen in the actual state of the present conflicts
18 between the armies of the Kuomintang and the Communist
19 Party. Besides, attention must be paid to the rela-
20 tions between the Chinese Communist Party and the
21 Soviet Communist Party or former "Comintern": The
22 Chinese Communist Party was organized under the leader-
23 ship of the "Comintern," and its movements were con-
24 ducted under the same guidance. (A. Ex. 57, Lytton
25 Report, Chap. I.)

A. Ex. 57, Lytton Report, Chap. I.

1 Japan was aware of from long ago that the
2 activities in Manchuria made by the Communists were
3 intended to ruin Manchukuo and ultimately to crush
4 Korea and Japan. And it came true; the status of
5 Manchuria is what we expected it to be, isn't it?

6 As can be seen from the foregoing state-
7 ment, China adopted an armed anti-Japanese movement
8 as her national policy with the result that the
9 communist campaign gained so big a momentum that
10 the situation has become very serious for Japan.
11 This may be made quite clear by the fact that
12 from 1932 to around the outbreak of the China
13 Incident the Chinese Communists issued scores of
14 tiras, declarations, resolutions, circular telegrams,
15 etc., making desperate efforts to attain their object.
16 (A. Ex. 57, Lytton Report, Chap. III). Namely:
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1 1. On April 26, 1932, the temporary govern-
2 ment of Soviet China published an anti-Japanese war
3 declaration decree. It declared that she was making
4 every possible effort to block the peaceful negotia-
5 tions which Japan and the Nationalist Government of
6 China had been continuing in an effort to adjust the
7 Sino-Japanese diplomatic relations. It also declared
8 that it was putting into practice its assertion that
9 Japan be expelled from China by a revolutionary race
10 war which would be brought about by declaring war
11 against Japan.

12 2. On April 15, 1933 it published a proposed
13 cooperation pact between Nationalists and Communists.
14 It declared that it would do its best to hamper the
15 negotiations between the Nationalist Government and
16 the Japanese Government over the adjustment of their
17 diplomatic relations. It also urged the Nationalist
18 Government to stop attacking the Communist Army and
19 to organize an anti-Japanese volunteer army, and
20 further maintained cooperation between Nationalists
21 and Communists.

22 On July 15, 1934, furthermore, it published
23 a declaration. It proposed to confiscate all Japanese
24 enterprises and properties in China by dispatching the
25 Chinese Communist Army to the north as a vanguard to

1 execute anti-Japanese warfare. Not only that, but it
2 urged the Nationalist Government to sever at once
3 diplomatic relations with Japan and China; it sought
4 to mobilize the entire Chinese Army to carry out the
5 joint anti-Japanese war and to organize the anti-
6 Japanese volunteers and guerillas to make them partici-
7 pate directly in the anti-Japanese war and the guerilla
8 warfare.

9 3. On August 1, 1935, it published the
10 famous August 1 declaration and stated, "Chinese people
11 in the whole country should work in the cause of anti-
12 Japanese national salvation." It pressed upon the
13 high officials of the Nationalist Government to abandon
14 their slogans on Sino-Japanese friendship, cooperation,
15 etc., and urged them to form a united front against
16 Japan instead of attacking the Communist Army. It
17 sought to put into effect anti-Japanese national
18 salvation by forming a united race front and by
19 establishing defensive government. It also sought to
20 confiscate all Japanese properties in China and the
21 funds to be appropriated to anti-Japanese war, to
22 overthrow Japan with the help of the working classes,
23 Koreans and Formosans in Japan who might be friendly
24 to the Chinese.
25

4. On December 25, 1935, it published, "The

1 now existing political situation and the resolution
2 on the Communists' mission." This revealed the fact
3 the Chinese Communists were making strenuous efforts to
4 form the anti-Japanese united race front, and to organ-
5 ize a defensive government and anti-Japanese allied
6 forces. It cited a ten-point anti-Japanese action
7 program such as "confiscation of all Japanese proper-
8 ties in China to be appropriated to anti-Japanese
9 enterprises; and all other anti-Japanese elements in
10 Korea, Formosa and Japan, etc." It is clear that they
11 were seriously endangering the lives and properties
12 of the Japanese.

13 And in this resolution, it was openly stated
14 that the Chinese Communists were endeavoring to en-
15 large and strengthen themselves through a process of
16 anti-Japanese war.

17 5. On March 10, 1936, it published the
18 anti-Japanese National Salvation Declaration. It
19 cited ten-point action programs and urged all classes
20 in China to form a defensive government and anti-
21 Japanese allied forces.

22 6. On June 13, 1936, it published, "The
23 resolution on the imminent political situation." This
24 revealed the fact that the anti-Japanese national
25 salvation campaign was spreading in the whole country

1 of China, especially in North China; that a big mass
2 campaign was in contemplation; in addition, the fact
3 that the lower officers of the 29th Army under the
4 command of Sung Che-yuan were so filled with anti-
5 Japanese spirit that they had made an outrageous
6 anti-Japanese declaration against their superiors'
7 orders; that a big anti-Japanese armed campaign might
8 break out in North China; that an over-all anti-
9 Japanese campaign was developing with the Communist
10 Army as its nucleus, and that the communists had the
11 intention to hasten, support and expand the war against
12 the pro-Japanese Chinese as well as against Japan by
13 taking action.

14 Therefore, Sung Che-yuan's advance in North
15 China evidently meant an advance of the communist
16 elements.

17 Though Sung himself favored pro-Japanese, the
18 29th Army under his command contained many communists
19 who persisted in continuing both anti-Japanese and
20 pro-communist campaigns. Not only these soldiers
21 but also the general public in North China were filled
22 by now with anti-Japanese spirits because of the
23 propaganda and instigation on the part of the Chinese
24 Communists. This was an obvious fact.

25 7. And on July 8, 1937, that is soon after

1 the Marco Polo Bridge Incident, the Chinese Communists
2 issued a circular telegram, in which they categorically
3 opposed peaceful negotiations between Japan and China
4 and demanded war against Japan.

5 The foregoing development of affairs will
6 show clearly that not only the Sian Incident, in which
7 Chiang Kai-shek was kidnapped, was a plot mapped out
8 by the communists elements but also the Marco Polo
9 Bridge Incident was a prearranged plot by which they
10 intended to pave the way for the Nationalist Govern-
11 ment to participate in the anti-Japanese war by making
12 the Chinese Army take the initiative in firing.

13 From the beginning, the activities on the
14 part of the Chinese Communists were not mere ideo-
15 logical ones, but they were the concrete strategy that
16 directed the anti-Japanese combat in China; they were
17 the most important factors that formed the basis of
18 Sino-Japanese dispute.
19

20 As can be seen in the foregoing statement,
21 China adopted an armed anti-Japanese movement as her
22 national policy, and as a result the Communist cam-
23 paign gained so big a momentum that the situation had
24 become very serious for Japan. At this juncture the
25 Marco Polo Bridge Incident broke out. Japan, however,
put up with all sorts of insults, sticking to her

1 policy of peaceful solution of affairs by making
2 strenuous effort to avoid an over-all collision with
3 China. No sooner had the General Staff of Japan re-
4 ceived a report of the incident on July 8, 1937, than
5 it decided a policy to localize the incident and to
6 solve it as quickly as possible in the actual place.

7 For a considerably long period, Japan adhered
8 to this principle as her basic policy toward the
9 Incident. (A. Ex. 2487, HASHIMOTO's affidavit, T.
10 20611 - 20635; Ex. 2488, T. 20691).

11 At 6:42 p. m. that night, Chief of the General
12 Staff sent a telegram to the Commander of the Japanese
13 Garrison in China, ordering not resort to arms but
14 to seek to localize the affair. (B. Ex. 2487,
15 HASHIMOTO's affidavit, T. 20611; Ex. 2488-S, TANAKA's
16 affidavit, T. 20669; Ex. 2582, T. 21984). Then, on
17 July 9, Vice-Chief of the General Staff INAI sent a
18 telegram to the Chief of Staff of the Japanese Garrison
19 in North China, ordering him to solve the affair under
20 the following terms: (C. T. 21985).

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22 (a) The Chinese troops responsible for the
23 affair shall be withdrawn to the left bank of the

24 A. Ex. 2487, HASHIMOTO's affidavit, T. 20611 - 20635;
Ex. 2488, T. 20691.
25 B. Ex. 2487, HASHIMOTO's affidavit, T. 20669; Ex. 2582,
T. 21984.
C. T. 21985.

Yungting River.

1 (b) The security of peace shall be maintained
2 hereafter.

3 (c) Persons directly responsible for the
4 affair shall be punished. In accordance with the
5 order of the General Staff, representatives of the
6 Japanese Army in North China met those of the Chinese
7 Army and a pact was concluded on July 11 on the basis
8 of the aforesaid terms, which showed that China was
9 responsible for the affair. (A. Ex. 2487, G.
10 HASHIMOTO's affidavit, T. 20611, Ex. 2488, S. TANAKA's
11 affidavit, T. 20699; Ex. 2481, WACHI, Tsunezo's
12 Affidavit, T. 20570.)

13
14 And on July 18, General Sung, Chief of the
15 29th Army and Chairman of the Hopei-Chahar Political
16 Affairs Commission, came to Tientsin and formally
17 recognized the pact. (B. Ex. 2487, G. HASHIMOTO's
18 affidavit, T. 20611).

19 On July 25, however, the Langfang Incident
20 broke out and electric wires were cut between Peiping
21 and Tientsin. The Japanese Army, with the consent of
22 the Chinese Army, advanced to the place 50 kilometres

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24 A. Ex. 2487, G. HASHIMOTO's affidavit, T. 20611; Ex. 2488,
25 S. TANAKA's affidavit, T. 20699; Ex. 2481, WACHI,
 Tsunezo's affidavit, T. 20570.
 B. Ex. 2487, G. HASHIMOTO's affidavit, T. 20611.

southeast of Peiping and found the wires cut there.

1 After repairing operations were finished, the Japanese
2 repair unit was fired upon by the Chinese Army. (C.
3 Ex. 2487, G. HASHIMOTO's affidavit, T. 20611, T.21995).

4 Next, on July 26, the so-called Kwangaumen
5 Incident happened. The Japanese Army, with previous
6 notice and with the consent of the Chinese Army, dis-
7 patched troops to Peiping to protect the Japanese
8 residents there. No sooner had some of the Japanese
9 troops entered Kwangaumen than the Chinese Army closed
10 the castle gate and separated them from the main body,
11 then fired on both of them. (A. Ex. 2487, G. HASHI-
12 MOTO's affidavit, T. 20611; Ex. 2480, T. SAKURAI's
13 affidavit, T. 20552-20567).
14

15 At that time, many Chinese forces gathered in
16 North China and completely surrounded the Japanese Army
17 at Fengtai.

18 On July 27, the Japanese garrison, though it
19 had made every possible effort to solve the affairs
20 peacefully declared at last that there was no alterna-
21 tive but to resort to arms. (B. Ex. 2480, T. SAKURAI's
22 affidavit, T. 20552). On that same day in Tokyo, the

23 C. Ex. 2487, G. HASHIMOTO's affidavit, T.20611, T.21955.
24 A. Ex. 2487, G. HASHIMOTO's affidavit, T. 20552-20567.
25 B. Ex. 2480, T. SAKURAI's affidavit, T. 20552.

1 Chief Cabinet Secretary made the same statement.

2 Those two statements showed that Japan was
3 to fight against the anti-Japanese forces only and
4 not against the Chinese people.

5 They further pointed out that the Japanese
6 Army intended to restore peace and order quickly, to
7 respect the rights and interests of foreigners. They
8 also made clear that Japan had no territorial ambition
9 in North China. Till then, the actions of the Japanese
10 Army were limited within Peiping and its vicinity.

11 (A. Ex. 2480, T. SAKURAI's affidavit, T. 20552;
12 Ex. 2488, S. TANAKA's affidavit, T. 20669; Ex. 2487,
13 G. HASHIMOTO's affidavit, T. 20611.)

14 On July 29, however, the Tungchow Incident
15 broke out and 350 odd Japanese residents were massacred
16 by the Chinese Peace Corps. On the same day the
17 Japanese troops in Tangku and Tientsin were also
18 attacked. (B. Ex. 2498, K. KAYASHIMA's affidavit,
19 T. 20830 - 20835; Ex. 2499, S. KATSURA's affidavit,
20 T. 20840-20844; Ex. 2500-A, B. C., F. SAKURAI's
21 affidavit, T. 20848-20853).

22 The aforesaid many incidents unexpectedly

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24 A. Ex. 2480, T. SAKURAI's affidavit, T. 20552; Ex. 2488,
25 S. TANAKA's affidavit, T. 20669; Ex. 2487, G. HASHI-
MOTO's affidavit, T. 20611.
B. Ex. 2498, K. KAYASHIMA's affidavit, T. 20830-20835;
Ex. 2499, S. KATSURA's affidavit, T. 20840-20,844;
Ex. 2500-A,B,C, F.SAKURAI's affidavit, T. 20848-20,85.

1 caused the trouble to expand to a wider area and all
2 Japanese in China were confronted with the same danger
3 as occurred in Tungchow.

4 Throughout July, Japan never changed her policy
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of trying to localize the incident. It was indeed

1 China that broke the July 11 pact again and again and
2 all military actions taken by the Japanese Army in
3 the aforesaid cases were genuinely of self-defensive
4 nature. A

5 On July 10, China dispatched her air forces
6 and four army divisions north of Honan Province.
7

8 On July 12, troops of five provinces as
9 Shensi, Hona, Uupci, Anhwei and Kiangsu gathered along
10 the Lunghai Railroad and the Peiping-Hankow Railroad.
11 In succession Chinese troops marched to North China
12 in large numbers and in August the Nationalist army
13 completely surrounded the Japanese garrison in North
14 China. Now China was quite ready for the execution of
15 war against Japan. By the end of August, the Chinese
16 Army about 400,000 strong gathered in Hopei Province.
17

18 China, by taking such steps, expanded a
19 series of local incidents into an armed affair
20 comparable to large-scale war. B

21 The outburst of the Sino-Japanese dispute
22 is completely attributable to the challenge on the
23 part of China. Notwithstanding Japan's efforts to
24 stick to her

25 A. Ex. 2481, T. YACHI's affidavit, T. 20,569
B. Ex. 2487, G. HASHIMOTO's affidavit.

1 non-expansion policy, China did everything in her
2 power to expand the affair.^A

3 To cope with such a situation, Japan
4 reluctantly decided on August 31 to dispatch three
5 divisions to China. As was stated before, the
6 gathering of the Chinese forces in North China and
7 the attacks on Japanese troops are in violation of
8 the UMEZU-Ho Ying-chin agreement concluded in June,
9 1935.

10 SECTION III

11 Now, the Japanese forces could not help
12 making some preparations so as to effect a break
13 in the deadlock, when, on August 9 in the same year,
14 the Lieutenant OYAMA Murder Incident occurred at
15 Shanghai and the Chinese forces laid siege to the
16 Japanese Naval Brigade at
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19 A. Ex. 2479, M. KAWABE's affidavit, T. 20,519; Ex.
20 2489, T. KAWABE's affidavit, T. 20,552; Ex. 2481,
21 T. WASHI's affidavit, T. 20,569; Ex. 2482, Takaji
22 WACHI's affidavit, T. 20,576; Ex. 2487, G. HASHIMOTO's
23 affidavit, T. 20,611; Ex. 2488, S. TANAKA's affidavit,
24 T. 20,669; Ex. 2492, 2493, 2494, T. 20,793; Ex.
25 2495, 2496, T. 20,803, 20,805; Ex. 2497, T. 20,816.

Shanghai, Central China shortly after the outbreak of
1 the Lukouchiao Incident.

2 It is very obvious that these incidents
3 were provoked by China after she fell into the anti-
4 Japanese tactics of the Chinese Communist Party,
5 when viewed from the party's activities centering
6 around Shanghai as well as the disposition of the
7 Chinese Communist forces in those days.

8 The Chinese forces all-out offensive operations
9 finally made the Japanese forces resort to defensive
10 operations and, in consequence, the Japan-China
11 Incident was forced to expand into Central China,
12 although the Japanese Naval Brigade kept its military
13 operations within the limits of merely protecting the
14 Japanese residents. That is, China concentrated her
15 forces in the areas. Neighboring Shanghai and their
16 numerical strength was 50,000 on August 12, while that
17 of the Japanese Naval Brigade, having the responsibility
18 for protecting the Japanese residents over there, was only
19 4,000. Starting with the attacks of the Chinese forces on
20 August 13, the Japanese and Chinese forces at last came
21 into a clash with each other. Such being the state of
22 affairs, the Japanese Government and the Army General
23 Staff decided to dispatch two divisions to Shanghai in
24 order to rescue the said brigade from such impending danger
25 and also to

1 protect the Japanese residents over there. The out-
2 numbered Japanese forces had been further reinforced
3 when the Japanese Expeditionary Army arrived at Shanghai
4 on August 31. The Japanese Government made the greatest
5 efforts to avoid a collision, in accordance with its non-
6 expansion policy, but on November 2, three divisions were
7 landed at Hangchow as Japan could not help fighting in
8 order to prevent the annihilation of the Japanese forces
9 by the Chinese forces which had increased from 300,000
10 to 400,000 strong. The Japanese Army's mission was to
11 check China's large forces that were advancing on Shang-
12 hai, aiming at annihilating at a stroke all the Japanese
13 residents who were, together with the small number of
14 the Japanese naval marines, being besieged by the
15 Chinese forces. (A. Ex. 2488, TANAKA, Shinichi's,
16 affidavit, T. 20,669; Ex. 2515, OKAMOTO, Suemasa's
17 affidavit, T. 21,152, 21,154, 21,155, 21,166-21,172,
18 21,173; Ex. 2517, T. 21,178-21,180, 21,182-21,189; Ex.
19 2516, T. 21,189-21,200; Ex. 2518, TAKEDA, Isamu's
20 affidavit, T. 21,246, 21,257; Ex. 2419, T. 21,262.)
21 From the first, Japan carried out military operations
22 within the limit of necessity for self-defense against
23 the challenge made
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25 (A. Ex. 2488, TANAKA Shinichi's affidavit, T. 20669; Ex.
2515, OKAMOTO Suemasa's affidavit, T. 21152, 21154-5,
21166-21173; Ex. 2517, T. 21178-21180, 21182, 21189; Ex.
2516, T. 21189-21200; Ex. 2518, TAKEDA Isamu's affidavit,
T. 21246-21257; Ex. 2419, T. 21262.)

1 by the Chinese forces. Japan's military operations,
2 which were carried out in self-defense of her forces
3 and not against international law or any treaties, were
4 not the type of military campaign that can be called
5 war under international law. However, having entered
6 upon hostile actions, General Chiang Kai-shek positively
7 launched his military campaign, issuing the order of
8 General Mobilization on August 15, setting up the
9 General Headquarters, appointing himself Generalissimo
10 of the Army and Navy, and dividing China into four
11 zones of action. In other words what compelled Japan to
12 fight with China was China's own military operations.
13 On November 17, Japan at last found herself under the
14 necessity of setting up Imperial Headquarters. Her
15 military campaign was an inevitable action answering to
16 that of China. Japan's military operations were always
17 carried out later than China's positive operations.
18 Such a local event as stated above led up to the Japan
19 and China Incident. In spite of the fact that Japan
20 made all possible exertions to localize the Incident
21 consistent with her policy, military operations
22 spread out, more and more, dragged out by China's
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25 A. Ex. 248, T. 20,694-20,697.

1 efforts to expand it into a Japan-China war. (A. Ex.
2 2488, T. 20,694-20697.) Should one intensely study the
3 specific state of affairs between Japan and China, would
4 one understand why Japan had continually made such
5 efforts to the last to avoid obstacles to a peaceful
6 settlement.

7 The Chinese problems can scarcely be discussed
8 in the same way as the relations between the United States
9 and European countries and China since they are matters
10 of life and death for Japan. (B. Ex. 57, Lytton Report,
11 T. 20,899.) It goes without saying that the reasons
12 why the Chinese problems are life or death questions for
13 Japan is due to such specific geographical circumstances
14 that the territories of both countries are next to each
15 other.

16 The foregoing is proved by the fact that the
17 ISHII-Lansing Agreement of 1917 acknowledged Japan's
18 special position based on geographical adjacency.
19 (C. Ex. 2317, T. 17,389-17,391.)

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21 Japan was tormented by an annual increase in
22 her population of between 800,000 to 900,000 notwith-
23 standing her territories being too small for such over-
24 population.

25 (A. Ex. 2488, T. 20694-20,697.
B. Ex. 57, Lytton Report, T. 20899.
C. Ex. 2317, T. 17389-17391.)

1 As a consequence, political, social and economic
2 tribulations and anxieties grew apace. Whether her
3 counter-measures were good or bad was a matter of life
4 and death for her. There is comparatively little
5 arable land in Japan proper and her agriculture has
6 a meager supply potential for such over-population.

7 Accordingly, Japan could only resort to
8 emigration and manufacturing industry development
9 policies. All territories suitable, were, however,
10 closed against the Japanese people; for example, there
11 was even a certain country discriminating against
12 Japanese residents who were emigrants to that country,
13 despite the fact that the country is blessed with
14 vast land and abundant commodities. The disposal of
15 over-population by means of the emigration policy,
16 therefore, became hopeless in recent years. The only
17 other policy left for her, was the development of
18 the manufacturing industry. As a consequence of
19 scarcity of land and of commodities, Japan had to
20 obtain from abroad absolutely necessary materials
21 for development of manufacturing industries and had
22 to seek outlets all over the world for her manufactured
23 goods.
24 ^B

25 A. Ex. 57, Lytton Report, Chap. VII

B. " " " " " " T. 20,893-4.

1 However, most of the producing countries in the world
2 gradually restricted the supply of materials when Japan
3 developed her industrial production and when the rush of
4 her products became extensive oversea. Just prior to
5 the outbreak of the Japan-China Incident, among the
6 countries involved, with her, there were many countries
7 that enforced the restriction of prohibition of exports
8 and imports or adopted the tariff system - the refusal
9 to deal with a trading country and other blunt restrictions
10 on exports.

11 Thus Japan's industry was hard pressed. Further-
12 more, in foreign markets high tariffs and other fetters,
13 which were abundant after World War I, impeded progress
14 and kept out Japan's products.

15 Thus, Japanese Government authorities were very
16 much worried as to the next turn.

17 As a result the Japanese Government gave
18 up the industry development policy dealing with all the
19 world and could not help maintaining the survival of the
20 state by means of concentrating all efforts in China.

21 From the first, Japan had no territorial am-
22 bition in China. Through the economic cooperation of
23 Japan and China, Japan obtained the commodities that she
24 wanted while China got the manufactured products from
25 Japan.

1 Japan intended to establish peace in East Asia,
2 going hand in hand with China for the purpose of making
3 a contribution to the peace of the world. (A. Ex. 57,
4 T. 20,894-20,900.) Japan pocketed all sorts of insults
5 and violence, arising from China's anti-Japanese
6 agitation, which were committed by China several scores
7 of times. In fact, she expected to bring about co-
8 operation between the two countries.

9 Now, the relations between Japan and China are
10 very old, deep, and thick. It is beyond imagination
11 how the Chinese culture formerly influenced Japanese
12 culture, economy, politics, religions, etc., for so many
13 centuries. Since the MEIJI Restoration, Japan had
14 adopted European and American culture and such culture
15 in Japan had surpassed Chinese culture. Accordingly,
16 many Japanese advisors, technicians, professors and
17 teachers were employed by China and tens of thousands
18 of Chinese students studied in Japan. This fact clearly
19 shows the close relations between the two countries.
20

21 Japan depended upon China as much as China de-
22 pended upon Japan. From the historical, geographical,
23 and economic points of view, the two countries had to
24 be on good terms with each other. Accordingly, Japan
25

(A. Ex. 57, T. 20895-20900.)

1 firmly believed that economic cooperation of the two
2 countries was of an absolute necessity in point of
3 their co-prosperity.

4 Japan intended to remove all unequal relations
5 between the countries, as they were in the way of reali-
6 zing such an idea. Japan's unequal privileges acquired
7 from China originated in the Treaty of Commerce and
8 Navigation concluded with China in the year 1895; that is,
9 she was a little more than a half a century behind
10 Britain and other powers. In accordance with the afore-
11 mentioned intentions, the principle of abolishing extra-
12 territoriality was arranged in the provisions of the
13 Japan and China Supplementary Treaty of Commerce and
14 Navigation concluded in 1901; Japan gladly participated in
15 the conclusion and adoption of treaties and agreements
16 at the Washington Conference of 1922; at the International
17 Conference which was held at Peking in 1925, with
18 reference to the revision of the Chinese tariffs; she
19 played the leading role at the conference, submitting
20 the most liberal proposal relating to the recovery of
21 China's customs, autonomy, regardless of great losses
22 sustained by her with respect to foreign trade. Although
23 she later intended to effect the abolition of the unequal
24 treaties, always having the deepest sympathy with the
25

1 national aspiration of China, the realization of this
2 was unfortunately delayed by reason of complications
3 of the other Powers' interests. In 1940, the abolition
4 of extraterritoriality and the return of exclusive con-
5 cessions were effected, and the fundamental principles
6 of economic cooperations were agreed upon by both the
7 Japanese Government and the Nanking Regime, by means
8 of several agreements.

9 In those days, taking a step forward, Japan
10 was ready to conclude a treaty contributing to the wel-
11 fare of China. It is, indeed, explicit that further
12 effectual results could have been gained had the Chiang
13 Kai-shek regime shaken hands with Japan.

14 The armed clash of Japan and China, following
15 the Manchurian Incident came to an end by virtue of the
16 Tangku Truce Agreement concluded in May 1933. Having
17 returned to the normal policy of Sino-Japanese cooperation,
18 the Nanking Government carried out the Japanese-Chinese
19 Pourparler in 1934 and the agreement regarding the
20 principles of equality, mutual protection against
21 communism and economic cooperation between the two
22 countries was effected. Consequently, General Chiang
23 Kai-shek issued the Japan-China Good Will Statement
24 and subsequently proclaimed the Order Prohibiting Boycott
25 Against Japanese Goods. Moreover, the pending question

concerning the exchange of ambassadors was solved.

1
2 In North China, the anti-Manchuria and Anti-
3 Japan agitation, that had taken place in connection with
4 the Manchurian Incident and which had caused various
5 disputes was settled locally, also, the question with
6 reference to the demilitarized zone, based on the
7 armistice agreement, was solved locally by the so-called
8 UMEZU and Ho-luchin Agreement, although there were
9 infringing acts committed by China. Still further, the
10 question as to the invasion of the Sung-Cheyuan Army
11 into Jehol was also settled locally by the DOHIMARA-
12 Chintechun Agreement.

13 Despite breaches by China in the execution of
14 the aforesaid agreements, Japan waited patiently and
15 saw a ray of hope for restoring diplomatic relations
16 of the two countries to the path of right. ^B

17 With the Sian Incident, however, China's policy
18

- 19
20 A. Ex. 2506, T. 20,965, 20,966.
21 B. Ex. 2489, KAWABE, Torashiro's affidavit, T. 20,746-
22 20,761; Ex. 2490, SHIBAYAMA, Kenoshiro's affidavit,
23 T. 20,775-20,777; Ex. 2491, ISHIKAWA, Jun's affidavit,
24 T. 20,782-20,790; Ex. 2507, 20,967-20,978; Ex.
25 2508, T. 20,979-20982.

1 toward Japan was reversed and the two countries became
2 involved in the most grave situation as stated above.
3 But, Japan thought China's state policy such as armed
4 anti-Japanese agitation and joint action by Chinese
5 national and communist parties, was not the real inten-
6 tion of General Chiang Kai-shek; she was continually
7 patient and prudent on the one hand while on the other,
8 she made every effort to the end so that the incident
9 might be peacefully settled.

10 What Japan most disliked was troubles with
11 China, because she believed her sole way to survival was
12 closer and closer, economic cooperation between the two
13 countries. Why could not Japan help fighting though
14 she hated, any sort of dispute with China? As stated
15 above, Japan could not but help fight when forced to by
16 a China which followed the tune played by the Communist
17 Party. To wit, Japan's military operations, always in
18 answer to the challenges made by China, were carried
19 out within the limits of necessity for removing injustices
20 or were such operations as took the initiative against
21 the big Chinese forces in order to maintain Japan's
22 own security. It was unavoidable for the
23
24
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1 Japanese forces to adopt positive operations so that
2 the enemy's intention to fight could be stopped, with
3 a view to settling the Incident as soon as possible.
4 (A. Ex. 2488, T. 20,694-20697.) In so far as inter-
5 national relations are concerned, it is the regular
6 procedure to settle disputes arising between two coun-
7 tries by means of diplomatic negotiations.
8

9 And, there have been too many instances to
10 enumerate where the Powers concerned have used military
11 operations instead of diplomatic negotiations when they
12 had disputes with China.

13 As these were due to the special conditions of
14 China, one cannot draw a hasty conclusion that they were
15 unlawful in the light of international law, the Lytton
16 Report (B. Ex. 57, p. 513) proves so.

17 We now go to page 44, Section IV.
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(A. Ex. 2488, T. 20694, 20697.
B. Ex. 57, p. 513.)

SECTION IV.

1
2 Thus, diplomatic negotiations often met with
3 various difficulties and there were not a few cases
4 in which they were forced to be left unsettled. From
5 the standpoint of the other party to the negotiations,
6 slight questions might be left to chance, but in the
7 case of the vital ones, it was impossible to leave
8 them unsettled for a long time. Moreover, not only
9 could the power of the Central Government not reach
10 the whole land but the spheres of influence of local
11 governments were limited, while powerful generals with
12 strong military forces perverted the intentions of
13 the Government and caused diplomatic negotiations to
14 assume extremely complicated aspects. As such had
15 been, and this being the actual state of affairs in
16 China at that time, those concerned in the negotiations
17 could not help taking the trouble to persuade the
18 generals who had real power on the one hand while
19 holding negotiations with the Central
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Government on the other.

1
2 Furthermore, the fierceness of the collective
3 violence of the people was so great that once its
4 attack was directed to diplomatic subjects, it was
5 often impossible to conduct by ordinary means of
6 diplomacy. The collective violence was caused under
7 the guidance of a few people who took advantage of
8 the power of the mass and the mob psychology of the
9 Chinese people to follow blindly. The mob consisted
10 of large numbers of people and taking no fixed course
11 of action resorted to brute force so that not only
12 the Chinese but foreigners also had their social life
13 disturbed by violence and threat with houses and
14 property destroyed, burned, devastated or plundered.
15 Even cases of bloodshed were not a few.

16
17 The countries which suffered most from this
18 popular movement were England and Japan. To cite
19 recent instances, one can mention the Anti-British
20 disturbance in Hongkong, Canton and other places in
21 1924, the May 30th Incident in 1925 and the riots in
22 1926 for the recovery of the British extraterritorial
23 settlements in Hankow and Kinkiang, all of which were
24 done for the infringement of the British rights and
25 interests and the lives and property of the English
were day and night

1 objects of violence. At Shamen in Canton, even war
2 broke out (A. Ex. 57, Lytton Report, Chapter VII).
3 The mass movements, which were frequently repeated
4 in the anti-Japanese boycott, developed from such
5 negative measures as boycotting Japanese goods and
6 forced withdrawal of Japanese employees to positive
7 attacks on the lives and property of the Japanese;
8 and their outrageous disorderliness on the occasion
9 was beyond description. The Chinese Government was
10 shiftless and doing nothing all the time and showed
11 no sincerity in suppressing the movements. On the
12 contrary, the Government itself stirred up and took
13 advantage of the mass anti-Japanese boycott movement
14 to force Japan into submission. The Government once
15 issued a proclamation forbidding the anti-Japanese
16 movement but it had no effect and remained a dead
17 letter. (B. Lytton Report, T. 20,904). The use of
18 violence by the masses regarding foreign affairs and
19 the lack of power and sincerity on the part of the
20 government to suppress the violence naturally forced
21 the other party to the negotiations on vital questions
22 of national existence to adopt a device to stamp out
23 the violence by using its own military force and to
24 make the foreign
25

A. Ex. 57, Lytton Report, Chap. VII.
B. Lytton Report, T. 20,904

1 policy of the Chinese Government take a legitimate
2 course.

3 In diplomatic negotiations with China, it had
4 so far been traditional for foreign states mainly to
5 negotiate with the Central Government on the important
6 questions of the whole of China and of more than two
7 Chinese Provinces and to negotiate with the local Govern-
8 ment concerned on the questions of a local nature. The
9 complication of interests between the Central and local
10 Governments, however, often forced one to negotiate with
11 these two Governments at the same time. In such a case,
12 it was not uncommon for each of them to shirk responsi-
13 bility, the Central Government referring the matter to
14 the local government and vice versa and thus the matter
15 was indefinitely postponed with no prospects of settle-
16 ment for years. Such being the case, it was natural and
17 not unreasonable that a foreign state, that is, the other
18 party of the negotiations with China should conclude that
19 the matter was insoluble by means of ordinary measures.
20 The Chiang Kai-shek Regime had most strongly insisted
21 upon the wholesale withdrawal of the Japanese Army from
22 China. From the standpoint of Japan, it was not so
23 simple and easy for her to withdraw forces from China, as
24 the actual conditions of China being as mentioned above,
25 she did not accept our repeated offers of peace negotia-

tion. Thus, it should not hastily be concluded that
1 Japan had no sincere desire to make peace because she
2 did not agree to the proposed withdrawal of troops
3 from China.

4 Japan, who had stuck to the fundamental policy
5 of economic coalition with China, was forced to use
6 military force by the unexpected outbreak of the Lukouchiao
7 Incident for the purpose of self-preservation of her
8 army on the spot. China rushed reinforcements to crush
9 the Japanese Army at one blow and Japan also had to
10 dispatch her reinforcements with the result that the
11 incident spread wider and wider. Japan never intentionally
12 induced the incident for her economic purposes or out
13 of her territorial ambitions.

15 Though the Japanese Government had issued
16 various statements on the China Incident after it had
17 expanded to assume the aspect of nation-wide war, the
18 Lukouchiao Incident was by no means one that was caused
19 for the achievement of the intentions embodied in these
20 statements. The statements were issued for the settlement
21 of the trouble and not for causing it.

22 The tactics of diplomacy were often adopted to
23 take advantage of the weak point of the other party.
24 There were not a few instances in the international
25 relations with China in which foreign countries took

1 advantage of the Chinese weak points by using military
2 force. It is not an exaggeration to say the majority
3 of treaties concluded in the Nineteenth Century and
4 the first half of the Twentieth Century between China
5 and England, France and Russia, since the opening
6 of China to the world in 1842, were all achieved by
7 such tactics. Expecially, the treaties for the settle-
8 ment of the Boxer Rebellion in 1900 were made by the
9 use of combined forces of many powers. Still in
10 recent years, England landed a big force of 20,000
11 in China and other powers landed their marines at
12 Shanghai, too, during the May 30th Incident in 1925;
13 British warships bombarded the town of Wanhsien in
14 1925; Soviet Russia attacked the Manchurian Army in
15 1929 on the borderland of China and Siberia in a
16 protest against the anti-Soviet policy of the Chang-
17 hsuehliang Regime; and warships of America, England
18 and France bombarded the walls of Nanking during the
19 Nanking Incident in 1926.

20 Furthermore, it was as their preparation
21 against possible emergency that the powers had their
22 garrisons for many years in the Peking-Tientsin Area,
23 stationed many of their warships carrying landing
24 corps at the important ports on the rivers and coast
25 of China, and often organized a sort of fighting unit
composed of their residents, who were trained and commanded
by their

1 military officers. ^{1.} Although the system of the
2 North China Garrison was abolished in accordance with
3 the Resolution adopted in Washington Conference in
4 1922, the other systems of stationing garrisons survived.

5 The Japanese interests in China were such a
6 vital problem for Japan that her fate would be decided
7 and so even other states could not but admit that Japan
8 right well take some day strong measures for the
9 protection of them when forced to do so. Yet, Japan
10 tried with patience and prudence not to use military
11 force on her own initiative.

12 Generally, in the relations between states,
13 the use of military force by one state against another
14 leads to war and even when there is no use of military
15 force, coercion by force usually involves the danger of
16 bringing about war. In China, however, it was not
17 necessarily so due to the peculiar circumstances existing
18 there. Once, for instance, England gathered her force
19 at Hongkong during the Yunnan Incident in 1874 and
20 could thereby conclude the Cheefoo Treaty but no war
21 ensued. During the May 30th Incident in 1925, England
22 tried to settle
23
24

25 A. Ex. 2483, 2484, T. 20,594-20,598, 20,599-20,600.

1 the question of landing her forces, numbering 20,000
2 in China, but no war broke out between the two countries.
3 The bombardment of the walls of Nanking by the
4 warships of America, England and France during the
5 Nanking Incident in 1925 also brought about no war;
6 and the attack by the Soviet Army on the troops under
7 Chang-hsuehliang in 1929 did not lead to war either.
8 Thus, the diplomatic intercourse with China had a
9 singular and peculiar feature quite different from
10 the usual course of diplomacy. The use of force against
11 China was thus one of the measures often resorted to
12 by the Powers for the settlement of serious diplomatic
13 questions and it actually led to the use of military
14 force in some cases and in other cases it proved
15 nothing more than a threat. (A. Ex. 2485, T. 20,602-04).

16 Although Japan had no intention whatever
17 to bring about the China Incident in order to settle
18 the problem of the anti-Japanese movement, yet the
19 circumstances in China as above mentioned caused the
20 Incident to develop into warlike operations. Under such
21 circumstances, Japan merely tried, in these operations, to
22 protect her rights and interests guaranteed by the
23 treaties with China. She endeavored to suppress the
24 Chinese people's violence against Japan
25 A. Ex. 2485, T. 20,602-04.

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1 bringing her diplomatic relations with China into
2 normalcy and, moreover, to pave the way to bringing
3 about harmonious agreement between the Governments of
4 Japan and China for the economic coalition of the two
5 countries, which was the vital question for Japan.
6 Therefore, it was intended and announced, from the
7 very beginning, by the Japanese Government that Japan
8 would make the wholesale withdrawal of her army from
9 China whenever the proper opportunity arose for making
10 such agreement. (A. Ex. 460, KONOYE Declaration,
11 T. 5253).

12 The Chungking Government under General
13 Chiang Kai-shek once voiced the view that the with-
14 drawal of Japanese Army must be carried out as the
15 first requisite or else such diplomatic negotiations
16 as economic coalition and so forth should not be
17 contracted. Japan, however, could not accede to this
18 proposal as there existed peculiar situations in China
19 as mentioned above. Moreover military actions taken
20 by Japan were by no means against the spirit of the
21 treaties. In the Kellogg-Briand Treaty concluded in
22 1928, Japan had made the same reservation as England
23 and America to the effect that the Treaty shall not
24 be applicable in the case of the exercise of the right
25 of self-defense. And according to statement of the

1 United States Secretary of State at that time, the
2 necessity and extent of the self-defense should only
3 be decided by the country concerned alone. This was,
4 of course, wholeheartedly consented to by Japan.
5 Therefore, there could be no other state than Japan
6 which was in a position to decide the way and extent
7 of the use of military force in the China Incident.
8 It is unreasonable to regard the proposed economic
9 coalition of Japan and China as if intended by the
10 former as economic invasion because Japan resorted to
11 military force in the Shanghai Incident. If the term
12 "invasion" means the outward expansion of influence,
13 then Japan was not the only one country which engaged
14 in economic invasion. But, so long as it means the
15 invasion in its ordinary sense, it is most incorrect
16 to regard Japan as a country guilty of economic
17 invasion. Japan merely endeavored to save herself
18 from the pressure of over-population on the basis of
19 the reciprocal understandings with China and to main-
20 tain the lives of her people. It is incomprehensible
21 that the economic activities of the Japanese based on
22 treaty rights or the Sino-Japanese economic coalition
23 policy should be construed as an economic invasion only
24 because of the inevitable use of military force due to
25 the China Incident.

1 Furthermore, in the Sino-Japanese coalition
2 which was aimed at by Japan, the principle of the
3 Powers' equal opportunity in commerce and industry in
4 China was not in the least ignored. Since the pro-
5 posal by Secretary of State Hay in 1900, Japan entered
6 into all treaties and agreements upholding this
7 principle, often promised strict observance of it
8 and never neglected to practice it even when it was
9 not beneficial to her economic interests. Therefore,
10 the Sino-Japanese economic coalition advocated by
11 Japan never meant the Japanese acquisition of exclusive
12 interests in all economic activities. There were,
13 however, sometimes such situations as made the strict
14 exercise of the principle of equal opportunity
15 actually impracticable in the course of the China
16 Incident. The reasons are:

17 a. The quantity of goods purchased by the
18 Japanese Army to meet the absolute necessity of
19 military actions amounted to such a quantity that there
20 was actually little room left for the foreigners to
21 purchase;
22

23 b. The business transactions in general
24 were, for a while, seriously checked owing to the
25 battles and other disturbances;

c. Owing to the temporary but serious

1 disorderliness in the areas of conflict, the
2 foreigners in general were forced to refrain from
3 business transactions;

4 c. Owing to the necessity for military
5 action, the communications of the foreigners were
6 temporarily restricted in some districts.

7 These were a temporary but inevitable abnor-
8 mality naturally accompanying the exercise of Japanese
9 military force in China. But they were of such a
10 nature as to bring about the recovery of the normal
11 conditions upon the amelioration of the situation.
12 So, it is too severe an impeachment to say that Japan
13 refused to give equal opportunity of commerce and
14 industry to the foreigners. If one remembers that
15 the wholesale withdrawal of troops from China was the
16 principle of Japan from the beginning, it is, needless
17 to say, unreasonable to put too much stress upon such
18 temporary arrangements as mentioned above.

19
20 In case of civil wars, foreign wars or other
21 incidents, the enjoyment of the treaty rights by the
22 foreigners was very often temporarily restricted or
23 suspended on unavoidable grounds. Even in such cases,
24 which ought to be construed as contrary to the treaty,
25 the countries concerned used to endure them. So there
can be no reason why it should be impossible to assume

1 a tolerant attitude in the case of Japan.

2 THE INTERPRETER: May we now go back to
3 page 42 of the English text? Although the following
4 part, that is, from the ninth line, page 42, to the
5 end of page 43, was omitted as given to the Language
6 Division, Dr. KANZAKI read the corresponding parts in
7 the Japanese copy, as we were ahead of Dr. KANZAKI
8 at the time. We will now read--

9 THE PRESIDENT: Why is this necessary? This
10 is disorderly and we are going to have no disorder.
11 There are statements of fact in this address not
12 supported by evidence.

13 MR. LAZARUS: If Dr. KANZAKI inadvertently
14 read it, I don't think it should be read in English,
15 Mr. President, because it is marked stricken in our
16 copies.

17
18 THE PRESIDENT: The accused who are now
19 listening in Japanese are hearing things that are not
20 before the Court actually.

21 What is to prevent you from reading this,
22 Mr. Lazarus? You are co-counsel; you have a perfect
23 right to share the reading of this.

24 MR. LAZARUS: I will, if that is the pleasure
25 of the Tribunal, but it has just been our policy that
the counsel who does the writing does the reading in

1 court; but I will continue the reading, Mr. President.

2 THE PRESIDENT: The Japanese must be made
3 to conform to the English as far as possible now.

4 MR. LAZARUS: I will begin reading at the
5 middle of page 57:

6 At the time of the China Incident, societies
7 for maintenance of public peace and self-governing
8 committees were organized everywhere, too, and asked
9 the Japanese Army for the protection of their lives
10 and property. As the Japanese Army had no hostile
11 will against the Chinese people, their requests were
12 favorably accepted. To the Japanese Army these
13 organizations were available for the maintenance of
14 the local public peace. Their assistance was helpful
15 in purchasing provisions and other military supplies
16 or in establishing barracks needed for stationing
17 troops. Thus, the desires on both sides were coinci-
18 dent and their relations could not help becoming closer
19 and closer.
20

21 With the progress of the China Incident, the
22 self-defensive organizations were regionally organized
23 and kept closer contact day in and day out with the
24 Japanese Army. These organizations gradually had con-
25 nections with each other in the elongated course of the
incident and were finally united into one government

outside of the sphere of General Chiang's influence.

1 It was natural that this Government had vital relations
2 with Japan.

3 The birth of the Renovation Government was
4 the product of such situations, but this Government
5 was short of able personnel and had no adequate
6 capacity to push forward. It was just at this time
7 when Mr. Wang Ching-wei escaped from Chungking and
8 formed the New Regime.
9

10 Mr. Wang, was, as is well known, a top-flight
11 statesman in China and then leader of Young China. It
12 is needless to say that a person competent to lead
13 Young China should be the one who was burning with
14 ardent patriotic spirit. His view that the long
15 drawn-out conflict between China and Japan would ruin
16 both China and Japan was not accepted by General
17 Chiang and his repeated and direct advice to the
18 General caused danger to his person. Facing such a
19 situation he decided himself, in obedience to the
20 dictates of his own conscience to close contact with
21 Japan and to try to rescue China by promoting friendly
22 relations founded upon equality between China and
23 Japan. It was natural that this attitude of Mr. Wang
24 won the sympathy and support of Japan, which concurrent-
25 ly assisted the establishment of Wang's Government.

1 Mr. Wang was the Vice-President of the
2 Republic of China and at the same time the Chief of
3 the Central Committee of Kuomintang. Once he fought
4 alongside with the late Dr. Sun Yat-sen for the
5 realization of the Kuomintang Revolution and used
6 his efforts for the establishment of the Republic
7 of China.--

8 THE PRESIDENT: Where is the evidence of
9 that? There may be evidence -- I cannot recollect it --
10 hidden away in some document in evidence. There may
11 be a statement of that kind but I do not recall it.

12 MR. LAZARUS: On the next page it has two
13 references, Mr. President.

14 It was rationally impossible that a person
15 of such a career and position as he had to become the
16 puppet of an alien state and he was not in fact a
17 puppet driven by Japan. But it was rather Japan that
18 was driven by his leadership. When the National
19 Government of the Republic of China was established
20 on March 30, 1940, he used the sun-in-blue-sky flag
21 with the inscription of anti-communism and peace,
22 proclaimed the Three Peoples' Principles of Sun Yat-sen
23 and adopted the policy of anti-communism and peace.
24 He moved the capital from Chungking to Nanking and
25 invited General Chiang to come and join his movement

1 and tried to carry out the peaceful unification of
2 China. And as the best way to promote peace between
3 China and Japan, Japan gave her recognition to his
4 new regime in accordance with the principle of inter-
5 national law and in fulfillment of the actual re-
6 quirements of the situation.

7 The treaties concluded between Japan and
8 this New Regime clearly show that the New Government
9 had never been treated as a puppet. (A. Ex. 464,
10 T. 5334-6).

11 Even if this new government had some Chinese
12 in its personnel who were pro-Japanese, that was
13 quite natural from the peaceful, cordial relations
14 between Japan and China, so it is rationally impossible
15 to conclude from that that the new Chinese Government
16 was a puppet of Japan.

17 Skip pages 61 and 62.

18 THE PRESIDENT: We will recess for fifteen
19 minutes.
20

21 (Whereupon, at 1045, a recess was
22 taken until 1100, after which the proceedings
23 were resumed as follows:)
24
25

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: Omit page 61 and page 62, and
5 the first line of page 63, if your Honors please.

6 (Reading continued with the second line on
7 page 63) It is true that Japan was compelled to use
8 force, as above mentioned, in order to defend herself
9 in the China Incident, but she had not the slightest
10 idea of invading China to wrest her territory. She
11 is convinced that, in order to stabilize East Asia
12 and realize the principle of live and let live, it
13 is essential to unify China as a modern state and form
14 a government so firm as to preserve its territorial
15 integrity and public peace.

16 Accordingly, Japan strongly opposed the
17 partition of China by European powers toward the
18 end of the 19th century, and later, when the
19 joint control of China was proposed by some great
20 powers, she resolutely expressed herself against it.
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1 As regards the conclusion of the Nine-
2 Power Treaty in 1922, Japan made her endeavors at
3 the Washington Conference and willingly signed and
4 ratified this treaty.

5 Whether the territorial integrity of China
6 can be preserved or not is a problem directly affect-
7 ing the destiny of Japan as well as that of China
8 herself.

9 This is the reason why Japan cannot but
10 prevent other countries from acquiring Chinese
11 territory. The Russo-Japanese and the German-Japan-
12 ese War broke out on that account, and it is for the
13 same purpose that Japan contributed to the establish-
14 ment of the principle of equal opportunity and sup-
15 ported China's independence.

16 If Japan had had an ambition to wrest
17 territory from China, there would have been many
18 more opportunities available in the past. However,
19 she would not take advantage of the murder of
20 a missionary or an explorer to acquire a colony
21 if she had taken the initiative in wresting territory
22 from China, it might have given rise to the partition
23 of the whole Chinese territory. It is natural, there-
24 fore, that Japan abstained from acquiring Chinese
25 territory, for she was well aware that such an action

would be literally suicidal.

1 Japan had not the slightest idea of exercis-
2 ing military and political control over China. It is
3 plain that, in order to put China under Japan's mili-
4 tary control, she must constantly station about ten
5 million troops in China, and especially send a force
6 several times as large in case of emergency. Judging
7 from the national resources of Japan, it is clear
8 that such a thing is absolutely impossible and also
9 extremely difficult in view of the circumstances
10 peculiar to China.

12 The Chinese military system was lacking in
13 uniformity and organized on the basis of each dis-
14 trict and province. The provincial army is difficult
15 to control and supervise, for most of the staff is
16 composed of those who were born in the province where
17 the army has been stationed. Moreover, we must pay
18 attention to the idea of private forces, which remains
19 in the military system. In former years, all the
20 Chinese armies were a few leaders' private possessions.
21 These leaders arbitrarily decided the organization
22 and payment of their armies, and carried on operations
23 only to preserve and improve their influence and inter-
24 ests. It is undeniable that the idea as well as the
25 facts of the old military system remain in the present

1 national army system which has developed from the
2 former.

3 In the present military system, there are
4 many forces attached to the local governments as well
5 as one attached to the central government. The former
6 have not so much outgrown the old private force.
7 Their leaders have full powers to organize, pay,
8 appoint and dismiss, so the forces move at their
9 will and even the central headquarters cannot really
10 appoint, dismiss or transfer an officer.

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1 These provincial forces oppose each other
2 by the centrifugal idea of "provinces opposing each
3 other", which is traditional in China. There exist
4 the same relations between the central and local head-
5 quarters in every province. Thus the Chinese military
6 system is so complicated that it would be difficult even
7 for the greatest general or hero of all times to unify
8 China completely. Even if China yielded under strong
9 force for a time, she would all too soon be restored to
10 the former state. Japan is well aware of this fact.
11 The Chinese themselves could control China completely;
12 it was absolutely impossible for the Japanese to rule
13 China by force - for the Japanese who had been subject
14 to expulsion there. Nor has she had any ambition to
15 exercise political control over China. This will become
16 clear of itself, when one realizes the extremely com-
17 plicated policy of the country.

18 THE PRESIDENT: I do not recollect any evidence
19 to that effect. There may be. Who gave the evidence
20 about the present military set-up in China?
21

22 MR. LAZARUS: I don't remember.

23 THE PRESIDENT: We will only waste time dis-
24 cussing this summation. We will disregard every state-
25 ment of fact that is not supported by evidence.

 MR. LAZARUS: I will continue reading at the

bottom of page 67, Mr. President:

1 China is not a completely unified country,
2 but one of an extreme decentralization. Except in a few
3 designated matters every province is allowed to govern
4 itself almost as freely as an independent country.
5 This has been written in history from olden times.
6 Even though she appears to be a unified, centralized
7 country, the central government can in practice exer-
8 cise its influence only over the sphere where it can
9 wield its military power, and outside the sphere, each
10 province is under sway of a local power that is enforc-
11 ing an extremely localized autonomous government there.
12 Such a system was not established in a day, so it will
13 take time to break it down. These actual circumstances
14 have resulted from the fact that all the provinces, as
15 distinguished from each other, have been continuously
16 at variance for the past several thousand years. They
17 have their respective political ideas and interests.
18 By race, the inhabitants are various; some provinces
19 mainly consist of the Chinese race, and some of an
20 alien race. The races exclude and despise each other
21 and there is an instance of a race having in recent
22 years slaughtered another one on a large scale.

23 The unification of thought is a matter claim-
24 ing prior settlement for the foundation of a unified
25

1 In addition, owing to the difficulty of
2 communications there are a few opportunities for them
3 to unify their thoughts by keeping in contact with
4 each other.

5 Accordingly, however great a statesman or
6 military clique, no one has ever succeeded in exer-
7 cising political control of China. With all the in-
8 fluence and ability of General Chiang Kai-shek, a
9 civil war is still prevailing even in China Proper,
10 which is due to the existence of the Chinese Communist
11 Party as well as the traditional force striking deep
12 roots behind it. Even the greatest statesmen, or the
13 most influential man in China, cannot control it polit-
14 ically. Much less the Japanese who have been the tar-
15 get of expulsion policies. So Japan is well aware
16 that it was impossible for Japan to exercise political
17 control over China by using her own force.

18 As a matter of fact, in regard to the civil
19 government within the limits of its military opera-
20 tions in China, the Japanese Army did not adopt the
21 system of administration toward occupied areas, but
22 system of administration toward occupied areas, but
23 chose the course of allowing the inhabitants to keep
24 public order,
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1 stabilize their livelihood and rehabilitate their
 2 economy autonomously. It is also needless to say that
 3 she had absolutely no intention to exclude third
 4 countries from the sphere of her military movement.
 5 (A. See references listed below).

6 Although it is possible that there arose
 7 some temporary and anomalous situations because of
 8 the necessity of military movements, Japan followed
 9 the policy of restoring to normal conditions as soon
 10 as the Incident was settled. It is quite unavoidable
 11 that some anomalous situations should arise in the
 12 process of a military movement; even Great Britain
 13 definitely recognized the existence of a large-scale
 14 military movement between Japan and China, as a result
 15 of the Anglo-Japanese conversations concerning the
 16 Nientsin Incident.

17 The Ladybird, Panay and Hughessen Incidents
 18 were all caused by mistake in the military movement of

19
 20 A. Ex. 2530; MITSUNAMI, Teizo's affidavit, T. 21,383-85
 21 Ex. 2531, T. 21,390-92; Ex. 2535, T. 21,423-26;
 22 Ex. 2532, KOBAYASHI, Yoshito's affidavit, T. 21,398
 23 21,402; Ex. 2533, T. 21,406-9; Ex. 2577, NAKAYAMA,
 24 Yasuto's affidavit, T. 21,888-913; Ex. 2537, HIDAKA,
 25 Shintaro's affidavit, T. 21,444-463; Ex. 323,
 21,468-9; Ex. 3095, T. 21,469-70; Ex. 328, T.
 21,476-483; Ex. 2539, YAMAMOTO, Yoshio's affidavit,
 T. 21,486-493; Ex. 2540, T. 21,495; Ex. 2541, T.
 21,506-10; Ex. 2542, T. 21,516-521; Ex. 2543, T.
 21,521-527; Ex. 2544, T. 21,528-529; Ex. 2545, T.
 21,529-536; Ex. 2546, T. 21,540-542; Ex. 2547, T.
 21,549-558; Ex. 3054C, T. 27,387-389.

1 the Japanese Army, but they have already been settled
2 by compensating for damages with the approval of the
3 injured party. (A. see references listed below).

4 It goes without saying that it was not with
5 an intention to exercise economic control over China
6 that Japan appealed to arms. In order to control it
7 economically, Japan must have, at least, military
8 and political control over China. However, there was
9 no objective possibility of Japan exercising military
10 and political control over China, nor had she any
11 intention to do so, as I have previously stated.

12 Such a situation is really excusable, because
13 it had necessarily arisen from the temporary state of
14 occupation by the Japanese Army on account of the
15 conflict between Japan and China. So it would be wrong
16 to consider it as exercising military and political
17 control, and it would be also a strained interpreta-
18 tion to consider it as exercising economic control
19 over China.

20 "Illegal or unfair economic control" does
21 not mean that Japan economically assumed a predominant

22 A. Ex. 2519, Tr. 21,337-39; Ex. 2530, T. 21,341; Ex.
23 2521, T. 21,345-8; Ex. 2522, T. 21,350-2; Ex.
24 2523, T. 21,353-6; Ex. 2524, T. 21,358; Ex. 2525,
25 T. 21,361/ Ex. 2526, AOKI, Takeshi's affidavit,
T. 21,363-6; Ex. 2527, T. 21,367-8; Ex. 2528,
T. 21,371; Ex. 2529, TOZUKA, Michitaro's affidavit,
T. 21,373-6; Ex. 2534, T. 21,410-12.

position in China in a really fair and proper way.

1 Even under the principle of equal opportunity,
2 one who makes more contributions and benefits than
3 others can economically assume a predominant position
4 in any country. This is to be approved, for free
5 and fair competition can exist under the principle
6 of equal opportunity.

7 What Japan was aiming at was to develop
8 China's unexploited resources by investing her capital
9 and displaying her technical and managing ability in
10 close collaboration with the Chinese inhabitants, so
11 that the resources may be utilized by the Chinese
12 as well as by the Japanese, paying so much money.
13 Japan also wanted to export the goods needed by China,
14 so as to promote foreign trade, or in other words, to
15 enrich the life of the Chinese people and also benefit
16 the Japanese themselves.
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1 SECTION VII.

2 Japan desired economic activity in the sense
3 which meant the Sino-Japanese economic cooperation.
4 Except in this sense, Japan did not seek any other
5 economic sway in China by obtaining therein military
6 and political controls.

7 The just Japanese economic activities in
8 China having been blocked by the Chinese anti-Japanese
9 agitation which was executed virtually by pressing
10 Japan economically with force and military, Japan
11 naturally desired to eradicate this and this motive of
12 Japan should not be confounded with obtaining economic
13 sway by military influence.

14 Accordingly, it is a great mistake to conclude
15 Japan's development and utilization based on the
16 policies aforesaid as an act of economic aggression.

17 It is actually true that in wartime some
18 Japanese troops took over some Chinese business, but
19 this was done only within the necessary limit of
20 maintaining economic order on the spot, and was
21 never aimed at economic aggression.

22 Such acts of taking over were for providing
23 the residents of the occupied areas with their require-
24 ments, for defending their business equipment from
25 the plunder and destruction by communists and bandits,

1 and, above all, in accordance with the right of the
2 occupation forces laid down in International Law,
3 for the purpose of procuring provisions and supplying
4 the forces on the spot and this act, of course, must
5 cease to continue with the end of the incident and
6 it in fact ceased.

7 Therefore, even in the time of the Incident
8 the Japanese forces did their best to return factor-
9 ies and other possessions to China so that normal
10 conditions might be regained.

11 Meanwhile, China, turned into a battlefield,
12 was very much devastated economically and its economic
13 rehabilitation was the most pressingly imminent mat-
14 ter. Because of the fact, however, that most promin-
15 ent Chinese ran away from the scourge of the war,
16 Japan, complying with the wishes of the remaining
17 Chinese, was constrained hastily to give aid to
18 the autonomous economic rehabilitation of the Chinese
19 for promoting of their welfare. (a)
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21 But the Japanese forces, refraining from di-
22 rectly concerning themselves in this task, made the
23 Japanese and Chinese civilians begin the autonomous
24 joint operation between them, the birth of the North
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(a) Ex. 2579, affidavit of OIKAWA, Genshichi,
T. 21,950-21,958.

1 China Development Company Ltd. and the Central China
2 Development Company Ltd., being the fruits thereof.
3 These two companies irrespective of their interests,
4 restricted their own operations chiefly to the most
5 necessary work for the national life, the nature of
6 which was, therefore, substantially different from
7 that of the British East India Company.

8 The North China Development Company Ltd. was
9 organized on the 7th of November 1938 with a capital
10 of ¥350,000,000 which they invested in the establish-
11 ment of a harbor, the facilities of communications,
12 the electric industry, mining and salt-manufacturing.
13 The Central China Development Company Ltd. was organ-
14 ized with a capital of ¥100,000,000 which they invest-
15 ed in railway transportation, electric and gas enter-
16 prises, and mining industry. And the works of both
17 companies brought about the economic welfare of China,
18 while Japan suffered considerable loss therefrom. (a)(b)
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20 For the purpose of promoting Chinese welfare
21 by furthering the results of the Sino-Japanese
22 economic cooperation, Japan set up the China Affairs
23 Board, thereby rendering every effort in her power
24 for the rehabilitation of China.

25 a. Ex. 2576, aff. of KAWAMOTO, Yoshitaro, T. 21,874-81
b. Ex. 2579, aff. of OIKAWA, Genshichi, T. 21,950-
21,958.

Japan truly neither intended by force to
1 acquire the markets and the productive power, nor did
2 she intend to secure supremacy, predominance and monop-
3 oly. The pressure of the foreign powers upon Japan
4 induced her inevitably into adopting the self-support-
5 ing policy by means of the Japan-China-Manchukuo
6 economic cooperation, which never meant the antagoniz-
7 ing of third powers. In the counts of the Indictment
8 is stated that our exercising force over China is a
9 violation of the treaty agreements of security pro-
10 vided in International Law. But this statement is
11 wrong.

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13 Regarding the obligation laid down concerning
14 the commencement of hostilities in Article I of the
15 Hague Convention in 1907 as "Hostilities between
16 themselves must not commence without previous and
17 explicit warning, in the form either of a reasonable
18 declaration of war or of an ultimatum with conditional
19 declaration of war," Japan as one of the contracting
20 powers should be naturally under the obligation thereof.

21 However, faced with the urgent necessity for
22 self-defense, Japan entered into the hostilities with
23 China purely not only for the purpose of ending the
24 hostile acts by China against the interest of Japan,
25 which was of special and grave concern to her exist-

1 ence, but to seek the Chinese Government's reexamina-
2 tion of its attitude. This not being hostilities
3 properly to be called war, Japan was not yet under
4 the obligation to warn previously as provided in
5 International Law. But our local armies, on their
6 taking military actions, never failed to give
7 warning previously to the Chinese Government. But
8 these hostilities for the cause of self-defense were
9 speedily aggravated because China commenced the
10 attack in a comprehensive manner, unt'l at last it
11 presented a war aspect; that is, the hostilities for
12 our self-defense turned so instantly into a war as-
13 pect that in fact it was impossible by all means
14 for Japan to warn previously. Japan and China had
15 equally, as the contracting powers of the Hague Con-
16 vention, the obligation to declare war and to give
17 other previous warnings. Even China, which had the
18 intention from the first phase of the hostilities to
19 challenge Japan comprehensively to war, did not for
20 ages declare war. Therefore, Japan, which had been
21 longing for an early peace, was dragged on into the
22 war as she was challenged, although expecting the
23 peace was immediately attainable. As for Japan
24 who, as is clear from KONOYE's statement, adhered to
25 her national policies of "friendship" and "Sino-

Japanese cooperation," she was worried that the formal
1 declaration of war would make it difficult to restore
2 Sino-Japanese peace. In other words, Japan thought
3 it rather desirable, in order not to make the settle-
4 ment of the dispute difficult, to keep the Sino-
5 Japanese dispute from entering into a state of war as
6 far as possible; and furthermore, as a diplomatic
7 reason, the policy of Japan to avert the outbreak of
8 a world war as far as possible prevented her from
9 declaring war; that is, as Britain was then showing
10 bluntly a sympathetic attitude towards China, in case
11 of Japan's declaration of war the Sino-Japanese dis-
12 pute should turn into a state of war both substantial-
13 ly and formally, and such war in East Asia would, it
14 was feared, involve Europe. In addition to this,
15 the worry that America would be induced to enter the
16 war, which Japan most feared, was strongly prevailing.
17

18 And if the above described situation should
19 come about, a world war was certain.

20 As can be seen, not only was it impossible
21 to warn previously but also even to declare war
22 against China was impossible from our diplomatic and
23 other standpoints.
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25 As already mentioned the China Incident broke
out on the 7th of July 1937 at Lukowkiao with the

1 sudden firing of the Chinese forces at the Japanese
2 forces practicing then at night. Thus Japanese
3 forces were constrained to appeal to arms in the
4 face of this challenge, which meant fully the
5 exercise of the right of self-defense. And Japan
6 made many efforts to settle the incident locally
7 and to avoid aggravating it in its scope; her plan
8 of tactics was drawn up merely within the range of
9 such necessary purposes as the protection of her
10 rights and interests in China and of her nationals.

11 The Chinese Government, however, fell into
12 the intrigue of the Chinese communists who intended to
13 expand their influence by stubbornly carrying out
14 the anti-Japanese war; the government, as aforesaid,
15 came to agree to collaboration between the National-
16 ists and the Communists in accordance with the
17 Declaration of August 1, the December Resolutions
18 of the Chinese Communists, the Sian Incident, etc.,
19 and by the time of the outbreak of the Incident,
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1 China had already been mobilizing and concentrating
2 military strength on a large scale with the intention
3 of challenging Japan thoroughly and comprehensively.
4 This attitude of China caused the Liuktochaio Incident.
5 And China's attitude in the solution of it was always
6 faithless, causing the incident gradually to expand.
7 Thus, China herself forced Japan to enlarge the hostil-
8 ities for self-defense; further, she did not declare
9 war because she too did not deem these hostilities
10 war as prescribed in International Law. Therefore,
11 though the China Incident was gradually aggravated until
12 it took the shape of war, Japan should not be charged with
13 breaching International Law. Next, the fact that Japan
14 used her troops in the actions towards China is not a
15 violation of the obligation to settle international
16 disputes peacefully. It goes without saying that Japan
17 had the duty to observe all the treaty articles in which
18 the obligation to settle peacefully was provided, because
19 Japan was one of the contracting powers, but since these
20 Sino-Japanese hostilities were an armed conflict based
21 on Japan's right of self-defense, it is not a violation
22 by Japan of these treaties. a, b, c

24 a. Ex. 2502, T. 20,868-20,870

25 b. Ex. 2503, T. 20,874-20,879

c. Ex. 2500, T. 21,008-11

1 Japan's declaration of "the absolute opposition
2 to any interference in China's affairs by any power
3 except Japan" on the 18th of April 1934 was never intend-
4 ed to mean aggression by Japan. Since quite a long
5 while before, Japan had adopted the policy of settling
6 Sino-Japanese problems only between themselves, and the
7 reason for this was that any third power's interference
8 in a matter between Japan and China would more complicate
9 than simplify it, rendering the solution thereof more
10 difficult in the long run.

11 The reason why Japan withdrew from the League
12 of Nations is because the League itself did not know
13 that China's internal affairs and her international
14 relations were actually very complicated and difficult;
15 accordingly it was strongly feared that a League of
16 Nations' effort to bring about peace in the Orient might,
17 on the contrary, disturb public peace in the Orient,
18 owing to its lack of knowledge of the real state of
19 conditions in the Orient. The reason why Japan refused
20 to participate in the Advisory Committee of the League
21 of Nations on the 25th of September 1937 is because four
22 years before Japan had already withdrawn from the League
23 of Nations; therefore she neither had the obligation to
24 participate in it, nor did she feel the necessity to do
25 so. This attitude of Japan was not unlawful in any way.^a

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22 years before Japan had already withdrawn from the League
23 of Nations; therefore she neither had the obligation to
24 participate in it, nor did she feel the necessity to do
25 so. This attitude of Japan was not unlawful in any way.^a

1 Also, it was natural that we had to lodge an
2 absolute objection to the fact that the Japanese
3 Government's declaration of the 4th of November 1938
4 "The Nine Power Pact Obsolete", was deemed unlawful
5 and was cited as evidence of crimes against peace.

6 SECTION VII

7 The Nine-Power Pact was concluded in 1922
8 for the purpose of protecting the territorial integ-
9 rity of China. However, the international situation
10 in the East, especially in China, had undergone a
11 great deal of change in fifteen years and moreover
12 Russia was not a participant in the Pact. She had
13 just revolutionized herself when this treaty was
14 concluded and was not able to participate in it.
15 But conditions in the Far East after the lapse of
16 fifteen years had made this treaty of which she was
17 not a signatory utterly nominal and unworkable. In
18 other words, the Chinese Government, resorting to
19 action against Japan, crying for her deliverance from
20 the aggression of Japan and for Japan's overthrow,
21 made it her national plan to formulate an anti-
22 Japanese front in cooperation with the Chinese
23 Communist Party which had already declared war
24 against Japan. And in violation of the resolutions
25 at the conclusion of the Nine-Power Pact limiting

1 employment of military force, the armed forces of
2 China were considerably increased in number.

3 The extensive Outer Mongolia which belongs
4 to the territory of the Republic of China was
5 wholly placed within the sphere of influence of
6 the Soviet Union. Events in Shinkiang and Tibet

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1 must have been occurrences which the Republic of China
2 could not possibly have expected to be solved under
3 the Nine-Power Pact.

4 For Japan, whose fate is quite influenced by
5 the Republic of China under such circumstances, and who
6 was forced to resort to warfare by way of self-defense
7 against the challenge by China, it is not only exceed-
8 ingly irrational, but also incompetent to be bound
9 literally by the Treaty.

10 But as to whether a war of aggression should
11 be asserted as constituting a crime or not, no doctrine
12 has ever been set forth until today.

13 This having been discussed twice in the assembly
14 of the League of Nations, the proposals that a war of
15 aggression should constitute a crime of murder were all
16 abortive there. As it was impossible for international
17 jurists to establish distinction between a lawful war
18 and an unlawful one, decisive penalties based upon this
19 distinction failed to be fixed in several assemblies.
20 Particularly, the peace protocol debated in the second
21 assembly, in spite of the fact that it was signed by all
22 states, was ratified by none of them; Great Britain was
23 indeed the first to refuse ratification thereof.

24 Such being the case, the international law
25 in which a war of aggression constitutes a crime has

not yet been established. It must be said to be improper that the theory of a crime, of which international law does not treat, should be forcibly applied to the case of Japan, the defeated state. As to how highly the armed forces of Japan were attentive to the furtherance of military laws and the re-establishment of military morale by making efforts to observe strictly the laws of warfare throughout the China Incident, the military commanders' orders and instructions and other evidence afford ample proofs thereof. But of course we cannot

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- a. Exhibit No. 2548, TSUKAMOTO, Kenji (21562-63)
 - b. Exhibit No. 2549, KIKKAWA, Masaharu (21585)
 - c. Exhibit No. 2550, KIKKAWA, Genzo (21588)
 - d. Exhibit No. 2551, YOSHIBASHI, Kaizo (21594)
 - e. Exhibit No. 2555, IKEDA, Ryuzaburo (21614)
 - f. Exhibit No. 2556, MIYASAKI, Shuichi (21619)
 - g. Exhibit No. 2558, MASUDA, Kanetoshi (21633)
 - h. Exhibit No. 2559, AKAGI, Kivoji (21644)
 - i. Exhibit No. 2560, OYAMA, Fumio (21659-21661)
 - j. Exhibit No. 2479, KAWABE, Shozo (21701 & 21705)
 - k. Exhibit No. 2561, (21730 & 21731)
 - l. Exhibit No. 2562, (21736 - 21738)
 - m. Exhibit No. 2563, AMANO, Shoichi (21750-21751)
 - n. Exhibit No. 2565, (21759 - 21760)

(continued on next page)

1 deny that there were a few, among hundreds of thousands
2 of Japanese soldiers, who committed outrages. Against
3 such outrages the leaders of the Japanese army did their
4 best in resorting to all possible precautions, and upon
5 those who defiantly dared to transgress against the pre-
6 cautions severe penalties were inflicted for the purpose
7 of maintaining military laws and morale. In defensive
8 warfare attacks and subsequent deaths of men

9 (continued from preceding page)

- 10 o. Exhibit No. 2566, USHIJIMA, Tadao (21766)
11 p. Exhibit No. 2567, SANO, Torata (21776-7; 79-80)
12 q. Exhibit No. 2571, SAKURAI, Tokutaro (21793)
13 r. Exhibit No. 2572, YOKOYAMA, Isamu (21800-21803)
14 s. Exhibit No. 2573, ARUGA, Kazunaga (21808-21811)
15 t. Exhibit No. 2577, NAKAYAMA, Yasundo (21896-98,
16 21901-21903-21904-21906)
17 u. Exhibit No. 3073, SAWADA, Shigeru (27447)
18 v. Exhibit No. 3075, KOMODA, Koichi (27478)
19 w. Exhibit No. 3076, OKADA, Yoshimasa (27482)
20 x. Exhibit No. 3077, KOYASEKO, Kaname (27489)
21 v. Exhibit No. 3078, TOYOSHIMA, Fusataro (27495-6)
22 z. Exhibit No. 3079, SUZUKI, Teiji (27501-27502)
23 a'. Exhibit No. 3080, YONEYAMA, Beika (27505)
24 b'. Exhibit No. 3081, KURODA, Shigenori (27510)
25 c'. Exhibit No. 3082, ABE, Yoshimitsu (27522-27523)

1 are naturally justified in the light of laws of
2 hostilities and do not constitute any crimes
3 whatever.

4 But it goes without saying that unlawful
5 acts, except death inevitable in such hostilities,
6 should deservedly constitute crimes.

7 It is alleged in the Indictment that during
8 the China Incident Hankow, Changsha, Hengyang,
9 Kweilin, and Liuchow were all the scenes of
10 flagrant massacres, but witnesses testified the
11 allegations that the armed forces of Japan had dared
12 to commit such massacres were utterly false, and that
13 prosecution's evidence was extremely scant.

- 14 a. Exhibit No. 2549, KIKKAWA, Masaharu (21583-85)
15 b. Exhibit No. 2550, KIKKAWA, Genzo (21587-21589)
16 c. Exhibit No. 2551, YOSHIHASHI, Kaizo (21592-96)
17 d. Exhibit No. 2552, SAITO, Torajiro (21598)
18 e. Exhibit No. 2553, OGI, Eiichi (21601-21605)
19 f. Exhibit No. 2554, OGAWA, Saburo (21608-21609)
20 g. Exhibit No. 2555, IKEDA, Ryuzaburo (21612-21615)
21 h. Exhibit No. 2556, MIYASAKI, Shuichi (21618-21622)
22 i. Exhibit No. 2587, MORIOKA, Ko (21624-21627)
23 j. Exhibit No. 2558, SASUDA, Kanetoshi (21631-21633)
24 k. Exhibit No. 2559, AKAGI, Kiyoji (21641-21645)
25 l. Exhibit No. 2479, KAWABE, Shozo (21698-21702)

Care must be taken about numerous cases in which slaughter

1 of Chinese people was perpetrated by their own soldiers.
2 For instance, the Chinese army had its surveillance unit
3 which made it its duty to attack from behind the
4 retreating soldiers, with the object of surveillance.

5 -----
(continued from preceding page)

- 6 m. Exhibit No. 2564, AMANO, Shoichi (21748-21753)
7 n. Exhibit No. 2566, USHIJIMA, Sadao (21765-21767)
8 o. Exhibit No. 2567, SANO, Torata (21770-21801)
9 p. Exhibit No. 2568, 21782
10 q. Exhibit No. 2569, 21783
11 r. Exhibit No. 2570, 21784
12 s. Exhibit No. 2571, SAKURAI, Tokutaro (21792-94)
13 t. Exhibit No. 2572, YOKOYAMA, Isamu (21796-21803)
14 u. Exhibit No. 2573, ARIGA, Kazunaga (21808-21811)
15 v. Exhibit No. 2577, NAKAYAMA, Yasundo (21888, 21909)
16 w. Exhibit No. 3073, SAWADA, Shigeru (27444-27449)
17 x. Exhibit No. 3075, KOMODA, Koichi (27477-27478)
18 y. Exhibit No. 3076, OKADA, Yoshimasa (27480-27483)
19 z. Exhibit No. 3077, KOYASAKO, Kaname (27488-27491)
20 a'. Exhibit No. 3078, TESHIMA, Fusataro (27494)
21 b'. Exhibit No. 3079, SUZUKI, Teiji (27500-27502)
22 c'. Exhibit No. 3080, YONEYAMA, Beika (27504-27506)
23 d'. Exhibit No. 3081, KURODA, Shigenori (27509-27511)
24 e'. Exhibit No. 3082, ABE, Yoshimitsu (27519-27526)
25

1 The Chinese soldiers, in the last analysis,
2 were obliged either to be attacked by the Japanese army
3 when they advanced or fired by its surveillance unit
4 when they retreated. And the Chinese who were assumed
5 to have friendly feeling towards Japan were cruelly
6 murdered under the terrible name of "Kankwan" (T.N. a
7 Chinese spy upon his own country) by way of being made
8 an example to their fellow countrymen.

9 If the existence of such facts be clearly
10 recognized, whatever misunderstanding originated from
11 the conjecture that the Chinese casualties were all
12 caused by outrages that the Japanese soldiers committed
13 would be dissipated.^a

14 As perfect peace in the Republic of China was
15 the most longed-for goal that Japan hoped to attain,
16 she continued to make efforts for the prevention of
17 the spreading of the Incident and for the attainment of
18 peace at an early stage, from the very beginning.

19 To make it more exact, some time about June
20 1938, somewhere in North China Japan strove for open-
21 ing peace negotiations with the Chiang Kai-shek Govern-
22 ment through Hsiao, and some time around the fall of
23 Nanking she planned to invite peace between her and the
24 Republic of China through the medium of the German
25

ambassador to China, Trautmann.

1 I In the third place, we can find nowhere
2 evidence that Japan participated in the opium policy
3 of China in order to impair the health of the Chinese
4 populace and to weaken the anti-Japanese power. Japan
5 is, too, guiltless of the charge that she gained a vast
6 amount of profit from the opium policy and of appropriat-
7 ing it to war funds.^e The opium brought to Shanghai
8 and Nanking has no direct connection whatever with the
9 competent organs of Japan.^{a, b, c, d}

10 Originally, the Japanese Government designed not
11 only to discharge faithfully the obligations of treaties
12 it contracted with other states for strict control over
13 both the Japanese at home and the Japanese residents in
14 China against the illicit traffic in narcotic drugs
15 prepared with opium, but also to impede the dreadful
16 harms incurred by the abuse of them. General Chiang
17 Kai-shek had resorted to measures of total abstinence
18 from opium-eating in order to extirpate the harms of
19 opium, but whatever the suppressive steps, they failed
20

21 a. Exhibit No. 389, 4763

22 b. Exhibit No. 2574, 21865021866, NAKAMURA, Tatsuji

23 c. Exhibit No. 2575, MORI, Tokuji, 21868-21869

24 d. Exhibit No. 2583, FUJII, Shigeru, 22078-22079

25 e. Exhibit No. 2479, KAWABE, Shozo, 21703-21703

1 to make the opium-eaters give up their habit, and, however
2 severe the punishments, they could not frighten them.

3 These have time and again been put to test, but in vain.

4 Though the new Chinese Government showed grave
5 concern in setting up a plan against the opium problem
6 that confronted its country, and strove to put the plan
7 into operation, yet it, taking warning from the failures
8 hitherto repeated, hesitated to adopt the measure of
9 total abstinence from opium-eating and resorted to a
10 policy of gradual elimination of opium-eaters by
11 officially admitting eaters to be provided the smallest
12 necessary quantity of opium. In consequence, some stores
13 were permitted to put opium on public sale, but those who
14 were without certificates and were not opium-eaters were
15 absolutely prohibited from buying even the smallest
16 quantity of it.^a

17 As Japan once adopted this policy for gradual
18 elimination of opium-eaters in Formosa with good success
19 and had won universal admiration, she wished it to be
20 enforced also in the Republic of China with the view to
21 eliminating the ravages of opium. Approving of Japan's
22 desire, the new Government of China put it into operation.

23 This is the only point in which Japan is
24 connected with the opium problem of the Republic of
25

a. Exhibit No. 3154, BABA, Hayao, 28053

1 China. It would be markedly improper to allege this act
2 of Japan to be evidence of a crime against peace.

3 As already mentioned, the China Incident had its
4 origin when the Japanese army there was driven to take
5 action in self-defense for its very life, against the
6 planned challenge of the Chinese Government, which
7 challenge was the manifestation of intent to oust Japan
8 from her rights and interests in China by a coalition
9 with the Chinese Communist Party, a snare into which
10 the Chinese Government fell.

11 That this act of self-defense failed to termin-
12 ate in a short time was due to the conditions previously
13 stated. The China Incident was never a war of aggress-
14 ion. Japan had not the least intention to dominate
15 China, either militarily or politically or financially.
16 The accused did not contravene international law and
17 they can not be accused of war crimes. We assert these
18 points most emphatically.

19 Mr. Cunningham will continue with the summation,
20 your Honors.

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THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the Tribunal please, the following language correction is submitted: Exhibit No. 1975, page 5, lines 1 and 2, admitted on record page 14,520: Delete "we succeeded in making them all take oath" and substitute "we were able to secure the pledge from all of them."

THE PRESIDENT: Mr. Cunningham, after the summation that you are about to read was served on the Judges, I was informed that the summation had been served inadvertently, and that you desired to make alterations. Subsequently four of the Judges suggested alterations which I passed on to you. What is the position now, Mr. Cunningham?

MR. CUNNINGHAM: You received your advance copies at the same time that all other defense counsel received theirs. It was the first draft before any alterations or suggestions even had an opportunity to be incorporated. I have incorporated now in the draft all of the suggestions from the Tribunal, from the defense counsel, and anything that has been suggested that was disagreeable I think has been eliminated from the thing.

I want to suggest that KOISO and MINAMI are specifically exempted from this statement because

1 they are not involved in any way.

2 I will now present the defense summation
3 on the relations of Japan to Germany and Italy.
4 Although the prosecution has seen fit to inject its
5 proof concerning the relations of Japan to Italy and
6 Germany into many different phases of its case, and
7 over a long period of time from June 1946 to February 1,
8 1948 and later, and scatter its argument in the same
9 way, we shall attempt to answer their general charges
10 and explain our evidence as it relates to their case
11 generally on this subject by this one document. In-
12 dividual defendants will explain their own interpreta-
13 tion of all the events affecting them in their par-
14 ticular summations.

15 Inquiry Extended Beyond Tribunal's Jurisdiction

16 2. We have contended from the first, and
17 still urge, that the scope of this inquiry was unneces-
18 sarily extended to activities of the representatives
19 of the Japanese nation, which took place in parts of
20 the world other than in Japan and the Far East. We
21 have attempted to answer item by item, and to explain
22 with clarity the true intention of Japan and parties
23 alleged to be responsible for the relations between
24 the three nations involved, Italy, Germany and Japan.
25

~~We have been considerably handicapped by~~

1 virtue of the fact that even though the prosecution
2 could bring witnesses from the far corners of the
3 earth, and that expense was no object to them in
4 making their investigations, we were -- then the next
5 line is omitted. This was due to lack of facilities
6 of travel and the inconvenience of interviewing of
7 witnesses. Due to the nature of this trial and the
8 manner in which the prosecution presented its material,
9 it was impossible to attend court and travel the world
10 in search of witnesses and documents at the same time.
11 Even with the limited resources at our command, we
12 believe we have won the issue.* We shall give our inter-
13 pretation of the evidence which has been adduced on
14 both sides and call attention of the Tribunal to the
15 illogical and wholly untenable position of the prose-
16 cution, particularly the allegations contained in
17 Count V. Our contention that agreement among nations
18 for political or economical domination are not crimes
19 within the contemplation of the Charter will be
20 especially emphasized. We shall follow the outline
21 presented by the prosecution in order to make it
22 simpler for the Members of the Tribunal to compare
23 the claims and digest the proof.

24 Language Difficulty.

25 3. Although the prosecution had the problem

of dealing with Japanese and English and other languages, it must be appreciated that we had the task of reading and digesting German documents covering the whole world situation. (Period 1931-45).

Full Discovery of Facts Impossible.

4. We do not pretend to have given to this Tribunal the whole story behind the Japanese-German relations. In diplomacy this is impossible. One of the first things which happens when diplomatic relations are broken off is that all documents are burned. This has been a custom for centuries. It is a significant event. Since diplomatic correspondence has always been protected by custom, law and privilege,^{1.} relations between nations have never been within the realm of judicial inquiry before. Only after a war, such as now, could such a trial be possible. In peacetime such a breach of etiquette would be considered an act of war in itself.^{2.} History records such instances. This hearing could not possibly explore the depth of the intrigue involved; it has only scratched the surface. History will be a long time discussing and solving the problems which have been subject of our brief inquiry here under the issues raised in Count V.

(1. Moore 678-680. Hyde #428, 454)

(2) Wilson Sec. 72a, P. 194, 3 ed.)

1 Count V Vague and Indefinite.

2 5. Although the Charter calls for a plain,
3 concise and adequate statement of each offense charged,
4 we submit that Count V does not meet this test.^{1.} The
5 Tribunal at Nuernberg required that an agreement
6 between parties must cover "the intent to make war
7 on some particular nation at some specific time."
8 No such allegation is contained in Count V of the
9 prosecution's Indictment and no proof has been adduced
10 to substantiate such a charge. In our submission of
11 proof we have found it necessary to meet this vague
12 and pointless charge.

13 Nuernberg Decision Bad Law.

14 7. The prosecution falls back constantly
15 upon the agreement between the four nations for the
16 trial of the Axis criminals. Whether that was a proper
17 exercise of the rights of those powers under the sur-
18 render and occupation in Europe is a matter which
19 cannot be settled or even investigated here. It is
20 evident that the scholars and writers and jurists
21 of the world are divided in their opinions on the wis-
22 dom of the action which brought about the Nuernberg
23 trial.^{1.}

24
25 (5. 1. Sec. 3, Art. 9-A)

(7. 1. Vol. 33 Va. Law Review P. 679)

The comment of the bar is still divided on this point. To say that it was a mistake for our victorious nations to try the German leaders would not be to make a hasty judgment. Now that it has been done we need not await the judgment of history and peacetime consideration. If there had been no persecution of minorities in Germany, this would have been just another war for history to record. There is no excuse to be offered for these actions. We have no parallel to these acts arising out of the Pacific War. There cannot be any debate on this point.

Potsdam Declaration Cannot be Extended.

8. Although the prosecution claims much more for the Potsdam Declaration than it says, we suggest that it does not give this Tribunal any right to look into the events which transpired in Europe. If that document gives this Tribunal, through remote control, any power in the premises, it must be confined strictly to the trial of Far Eastern War Criminals as individuals.

9. Re B-Series. Crimes Against Peace, the Law, Aggressive Warfare.

Re B-1. It is the contention of the defense that the charges set out in the Indictment in Count V (8. 1. Ex. 2, T. 109)

1 are not supported by any charge or crime defined in
2 the Charter.^{2.} Neither is the offense described in
3 Count V recognized in International Law as malum per
4 se or malum prohibitum.^{3.} We recognize that domination
5 of the world is a responsibility of nations, the major
6 nations of the world; it is a duty of the powerful na-
7 tions. Such an aim has never been a crime or even
8 mentioned as a crime. The Charter never intended any
9 inquiry beyond "the just and prompt trial and punish-
10 ment of Major War Criminals of the Far East."^{4.} Nothing
11 is said or even implied in its terms about European
12 nations or the subject. It can be taken that they
13 were specifically excluded by their trial at Nuernberg
14 and the provisions of the Charter which follow. The
15 Charter is further restricted to "Persons who, as indiv-
16 iduals or as members of organizations, are charged
17 with offenses which include crimes against peace."^{1.}
18 Nations such as Germany and Italy cannot be considered
19 as persons.^{2.} We submit that the scope of this inquiry
20 does not cover the operations, negotiations or sover-
21 eign acts of European nations or leaders. This point
22 will be argued more fully later and supported by what
23 the authorities say on the subject.
24

25 (9. 2. Sec. 2, Art. 5, A.B.C.)

3. Moore 197 200-202, Wilson Sec. 48, Fl 130

4. Art. I, Sec. I.

1. Sec. 2, Art. 5.

2. Wilson Sec. 7, . 18.)

Re C-1. Prosecution Changes its Course.

1 10. Re C-1. In this charge the prosecution
2 changes the course somewhat. They begin their disserta-
3 tion on the law of conspiracy with the charge that in-
4 dividuals, persons, must act through themselves and
5 through each other, but then they change their course
6 and say that the persons acting through Japan, either
7 alone or in combination with other countries, wage,
8 declared, etc. It is difficult to grasp how the prose-
9 cution can undertake to try the nation of Japan, and
10 other nations, when clearly the jurisdiction of this
11 Tribunal is limited to a few persons and offenses,
12 individuals.^{3.}
13

Charter Not Authoritative.

14 11. Re C-3. There is no basis in law or
15 fact for the assertion of the prosecution that the
16 Charter complies with any of the requirements for the
17 sources of law.^{1.} The Nuernberg judgment although volum-
18 inous is not authoritative. Skip the next sentence.
19 Noble effort has been made by Justice Jackson and
20 others to give it weight and substance, but it will
21 not survive the test of law. Such a decision, based
22 as it is upon ex post facto law will never be accepted,
23 (10. 3. Sec. 2, Art. 5, L3)
24 (11. 1. Corbett P.V. Art. 38, St. Perm. Court)
25

under our system of justice at least.

Claims Inconsistent.

12. C-15. In applying the prosecution's test of Conspiracy to the Charge in Count V and the proof which they have supplied under it, they have defeated their own purpose. They say: "The Conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and action." The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.^{3.} In all of the discussions and argument and attempts at proof under the German-Japanese relations there has never been one iota of proof that the nations planned any war against any nation at any time jointly -- eliminate the next two words.

It is quite evident that Germany was not involved in the Far Eastern activities of Japan.^{1.} Germany was helping China with supplies, officers and technical advice in the struggle between Japan and China.^{2.} The prosecution proved this conclusively. There is no contention that Japan and Germany confided in each other about the attack on Pearl Harbor. There can be no doubt

(12. 3. Pros. C-15.

1. Ex. 2762, T. 24742.

2. Ex. 486-A, T. 5980.)

1 now that Japan kept her plans for the Pearl Harbor
2 attack secret from Germany, even from their envoy in
3 Berlin.^{3.} On the other side, we do not understand
4 that the prosecution has offered any proof on the ques-
5 tion of the war against Poland. Japan was against this
6 war, but was never consulted. Soviet Russia acquiesced
7 in this war when she made the agreement with Germany
8 August 23, 1939.^{4.} It is now history, well confirmed,
9 that Italy refused to join Germany in the war against
10 Poland.^{5.} There can be no claim that Japan welcomed
11 the war between Germany and Russia. Japan counselled
12 Germany against such a move and refused many times to
13 join, after many strong invitations, as Ribbentrop said,
14 "after the Russian war broke out I tried to get Japan
15 against Soviet Russia.*****I got the impression that
16 Japan did everything possible to keep out of a conflict
17 with Soviet Russia and to keep from antagonizing Soviet
18 Russia in any way."

19
20 There certainly was never any agreement between
21 the leaders of the nations to make war on any nation.
22 The prosecution has failed to meet their own require-
23 ments. The German and Japanese relations were not
24 constant enough, not close enough to be called friendly

25 (12. 3. Ex. 2762, T. 24744.

4. Ex. 2725, T. 24187.

5. Nuernberg Transcript)

1 even, far less close as the Russian-German relations.
2 Since the Tribunal has determined that the relations
3 between Germany and Russia and other nations are irrel-
4 evant to any issue in this case, and that the negotia-
5 tions of Germany with other nations were kept secret
6 from Japan and OSHIMA, this ruling should dispose of
7 any issue arising under Count V, if we understand
8 the ruling correctly

9 2. Conspiracy.

10 Thus far we have considered the relation of
11 the Indictment to the Charter and to the law of this
12 case. We have touched generally upon the contentions
13 of the prosecution in relation to the application of
14 the law of nations to individuals. We are more con-
15 cerned in this review with the effect of the Charter
16 upon the rights and privileges of nations named in
17 Count V, Italy, Japan and Germany.

18 There is no claim made in the summation that
19 Japan assisted Germany in Europe in any way except
20 politically prior to the commencement of the war in
21 Europe. There is evidence that Germany assisted China
22 in her war against Japan.^{1.} The prosecution agrees
23 that Germany sought advantages in the economic field
24 in the Far East but that her efforts were thwarted.^{2.}
25

(1. Ex. 486-A, T. 5980.

2. T. 37901, 22-12a.)

1 It is our theory that economic relations between the
2 nations are not a proper subject of inquiry here.^{3.} We
3 must assume that no nation would spend millions of
4 dollars maintaining embassies in the capitals of the
5 world without some hope of economic assistance by way
6 of trade and commerce.^{4.} War and Peace have a relation
7 to economic matters, but the purpose of international
8 intercourse is primarily the promotion of the economic
9 welfare of each nation while maintaining peaceful rela-
10 tionships.^{1.}

11 13. Re F-93. The prosecution suggests that
12 Japan had two courses with respect to the settlement
13 of her differences with the Soviet Union. One was
14 diplomacy, the other was war. That she chose diplomacy
15 has been proved. She played politics and protected
16 herself against the threat of the Soviet Union until
17 the end of the war, or nearly the end.

18 Re F-103. The prosecution has proved, through
19 an abundance of evidence, that it was Germany which
20 approached Japan for an agreement; at a time when
21 Japan was conducting normal diplomatic relations, as all
22 of the other nations of the world, with Germany. The
23 prosecution emphasizes that the military attache in
24

25 (3. Sec. 2, Art. 5 Charter.

4. Hudson & Feller, P. 1253.

1. Feller & Hudson Diplomatic & Consular Laws,

Vol. II, P. 1253 I (b)

1 Germany was instructed to keep an eye on Soviet Rus-
2 sia. This we admit. The authorities all agree that
3 it is the duty of the military attache to gather in-
4 formation about the armies of the nations to which
5 accredited and about the armies opposing them, in
6 peacetime or wartime. There is no controversy about
7 this.

8 14. We suggest that the negotiations for
9 the Anti-Comintern Pact were normal and followed the
10 pattern of diplomacy. We need not detail the nego-
11 tiations except to say that they were concluded by the
12 ambassador, ^{1.} MUSHOKOJI, passed by the Cabinet, approved
13 by the Emperor and after the consent and advice of
14 the Privy Council. ^{2.} Needless to say, the matter was
15 given full consideration in Japan. To say that either
16 the ambassador or the military attache had any influ-
17 ence on the decision of the government would be to
18 abuse the word ^{3.} influence. We have never had any
19 apology for the Anti-Comintern Pact or the secret pact.

20
21 15. Re F-104. We do not agree that a com-
22 mittee was established for the purpose of checking on
23 the activities of the Comintern. There is no point
24 in making an issue of this. Soviet Russia and the

25 (14. 1. Ex. 36.
2. Const. Japan.
3. ITAGAKI, T. 30497.)

1 action of the Comintern were the big question marks
2 in international politics then. Everyone knew what
3 the Germans were doing.

4 16. F-105. We admit that the agreement
5 and the protocol were to remain in effect for five
6 years. We state that the pact was renewed and the
7 protocol was abrogated. It has passed its day of
8 usefulness. Germany and Russia were engaged in a war.
9 It was to be expected that Japan would not assist the
10 Soviet. It was a life and death struggle. This his-
11 tory has proved.

12 17. F-106. There is no contest about the
13 pact being directed against the Soviet Union, once it
14 was established that the Comintern was the official
15 organ of the Soviet Union. There was some doubt about
16 this in the beginning. It was Bolshevism and Commun-
17 ism, not the Russian Army which was the object of the
18 pact.^{1.} This is undisputed. That Germany, Italy and
19 Japan and other countries joined hands in this enter-
20 prise was common knowledge to the world.

21 F-107. The prosecution admits and argues
22 forcefully that the military terms of the Anti-Comintern
23 Pact were never employed. That it was only a political
24 instrument, backed by a mutual obligation pact, and
25 (17. 1. Ex. 2762, T. 27742.)

1 that the effect was nil. All that they claim for it is
2 that it was the opener for friendly relations.^{1.} Al-
3 though we admit the pact, we suggest that the proof
4 shows that there was little mutual trust and faith
5 shown in each other by the two nations, Germany and
6 Japan. The background of the relations of the nations
7 and the variance in their systems and culture and
8 national habits explains this, but it is not an issue.

9 18. F-108. All of the contentions of the
10 prosecution on the effect of the Anti-Comintern Pact
11 are erroneous. It did not keep Germany and Russia
12 apart. It more than likely brought them closer together,
13 for the same reason which prompted the Japanese to use
14 the political weight of Germany. That the pact would
15 be used in the China Affair was not contemplated.^{1.}
16 This is the product of the imagination of the prosecu-
17 tion. Ribbentrop and OSHIMA both speak clearly on this
18 subject. Why the prosecution should suggest that the
19 use of the pact became the subject of a difference
20 between the nations is a puzzle.

21
22 We claim that there was no harm in using
23 the pact as a restraint against the Soviet Union. That
24 was the object of it primarily.^{2.}

25 (17. 1. #7 Par. H. 125, P. H 98)
(18. 1. Ex. 2762, T. 27742.
2. Wilson #100, P. 249.)

1 19. F-109. Although the prosecution has
2 tried in vain to read into the Anti-Comintern Pact
3 something which is not there, their claim that the
4 pact brought Germany and Japan closer together, was
5 true only for a time. It is also true that Germany
6 used the pact only so long as it served her ends and
7 then discarded her obligations. Skip the rest of that
8 sentence.

9 The world knew what Hitler was doing and
10 stood by and watched him build his mighty war machine.
11 We might remind the Tribunal and also the prosecution
12 that the United States, Britain and France and other
13 countries were carrying on normal diplomatic relations
14 with Hitler while the Japanese Government was standing
15 by. Even if the ambassadors and envoys did disapprove
16 of Hitler's moves, diplomacy precluded any comment or
17 expression of disapproval.^{1.} Friendly relations existed
18 between Germany and Japan until Germany took up with
19 the Soviet Union. We have no apologies to make for
20 the Anti-Comintern Pact.

21 20. F-111. Although the prosecution claims
22 that German-Japanese relations in China economically
23 were improved, that is not the fact as has been dis-
24 closed by the record. The prosecution took considerable
25 (19. 1. Fenwick International Law, 2d Ed. P.368)

time of this Tribunal in showing that German demands
1 for preferential treatment were denied in Japan. There
2 is no doubt that such demands were made but they were
3 refused. In other places in their summation the prose-
4 cution claims that Germany was complaining about her
5 treatment at Japan's hands at the time when they claim
6 in another paragraph that Germany and Japan were cooper-
7 ating. It was difficult to reconcile the conflicting
8 claims.

9
10 21. F-112. The prosecution has resorted to
11 petty items to establish cooperation and collaboration
12 between the two nations. It is hardly worth answering.
13 Nations are urged to associate and cooperate. It is
14 natural to do so.^{1.} The prosecution relies upon a few
15 minor associations to establish their point. The more
16 they attempt, of course, the more emphatically they
17 fail to sustain their contention.

18 22. F-113. After using three paragraphs to
19 show cooperation, the author of this part of the sum-
20 mary admits that Ribbentrop was never ready to settle
21 for non-preferential treatment.

22 This covers the general discussion. We shall
23 take the prosecution's evidence now and analyze the
24 facts and digest the law, as applicable to the relations
25 (21. 1. United Nations Economic Commission.)

of Japan, Germany and Italy.

1 THE PRESIDENT: We will adjourn until half
2 past one.

3 (Whereupon, at 1200, a recess was
4 taken.)
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1 AFTERNOON SESSION

2
3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: With the permission of the
8 Tribunal, the accused KAYA will be absent from the
9 courtroom for the entire afternoon session, conferring
10 with his counsel.

11 Mr. Cunningham.

12 MR. CUNNINGHAM: I shall start on page 21, No. 3:

13 THE ANTI-COMINTERN PACT.

14 Although Japan and Germany had been conducting
15 normal diplomatic relations during the days after World
16 War I, it was a good many years before the German
17 Government was sufficiently organized so that it could
18 negotiate trade, cultural and economic agreements
19 generally with the other powers of the world. They were
20 courting France, England and Russia and the other nations
21 of Europe who were close to them and with whom they had
22 always, for centuries carried on trade and commerce.
23 The relations between Japan and Germany took form in
24 the agreement which history knows as the Anti-Comintern
25 Pact. As Libbentrop says, "We did not want to have

1 communism spread in Europe." The Japanese did not
2 want communism to spread in Asia and did not wish to
3 allow it to interfere with the settlement of the China
4 problem.

5 The prosecution tried in vain to read into
6 the agreement something which it didn't contain. They
7 are also endeavoring to attach some responsibility
8 for its negotiation. They have failed, as is demon-
9 strated by the following analysis of their documents.

10 TERMS OF THE ANTI-COMINTERN PACT.

11 Before we attempt to analyze the legal
12 effect of the pact and interpret its meaning, in the
13 light of the then existing circumstances, let us
14 take a look at the simple terms of the pact and the
15 parts of the protocol which are in controversy. It
16 has been so long since this exhibit was introduced into
17 evidence it is but natural that its terms are not
18 fresh in our minds.

19 PACT AGAINST THE COMMUNIST INTERNATIONAL.

20 The Japanese Imperial Government and the
21 German Government, admitting that the object of the
22 Communist International (so-called Comintern), is the
23 destruction and oppression by force of existing nations
24 with all the possible ways and means, in the firm
25 belief that to overlook the interference by Communist

1 International with these nations' internal relations
2 not only jeopardizes their domestic peace and social
3 welfare, but also is a menace to world peace as a
4 whole, desirous to cooperate for the defense against
5 Communistic destruction, concluded a pact as follows:

6 Article I

7 The contracting parties agree to inform each
8 of the Communist International's activities, to discuss
9 necessary measures for defense and promise to fulfill
10 such measures through close cooperation.

11 Article 2.

12 The contracting parties will jointly invite
13 a third nation, whose internal peace is menaced by
14 destructive activities of the Communist International,
15 to take defense measures in the spirit of this pact,
16 or to participate in the pact.

17 Article 3.

18 As regards this pact, the Japanese and German
19 texts are official. It comes into force on the day of
20 signing and will be effective for five years. The
21 contracting parties will, at a proper date prior to the
22 expiration of the term, come to an understanding as to
23 the form of cooperation between the two countries
24 thereafter.
25

As an evidence thereof, the undersigned duly

1 entrusted by their respective home governments, signed
2 and sealed this pact. Two copies of this pact were
3 prepared at Berlin on the 25th November of the 11th year
4 of Showa, i. e. the 25th November, 1936.

5 (Sgd) Viscount HUSHAKOJI, Kintomo

6 Envoy Extraordinary and Ambassador
7 Plenipotentiary of Japanese Empire.

8 (Sgd) JOACHIM V. RIBBENTROP

9 Envoy Extraordinary and Ambassador
10 Plenipotentiary of Germany.

11 ACCESSORY PROTOCOL to the Pact against the
12 Communist International.

13 On the occasion of signing today of the Pact
14 against the Communist International, the undersigned
15 Envoys Plenipotentiary agreed as follows:

16 (a) The authorities of the two contracting
17 parties will closely cooperate with each other as
18 regards the exchange of information relating to the
19 activities of the Communist International and the
20 enlightenment and defense measures against the Communist
21 International.

22 (b) The authorities of the two contracting
23 parties will take drastic steps, within the bounds of
24 the existing law, in dealing with persons who, at home
25 or abroad, directly or indirectly, are serving with

1 the Communist International or foster its destructive
2 activity.

3 (c) In order to facilitate the cooperation
4 of the authorities of the two contracting parties, as
5 provided in forementioned (a), a standing commission
6 will be established. Other defense measures necessary
7 for checking the destructive activities of the Commu-
8 nist International will be studied and discussed by
9 the said commission.

10 Berlin, the 25th November of the 11th year of
11 Showa, i. e., the 25th November, 1936.

12 (Signed) Viscount MUSHAKOJI, Kintono
13 Envoy Extraordinary and Ambassador
14 Plenipotentiary of Japanese Empire.

15 (Signed) JOACHIM V. RIBBENTROP
16 Envoy Extraordinary and Ambassador
17 Plenipotentiary of Germany.

18 (1) The prosecution asserts that the Anti-
19 Comintern Pact and the accessory Secret Protocol were
20 directed against Russia, and that their purpose was to
21 check and restrain Russia in collaboration with Germany
22 until the Japanese aggression in China obtained its
23 objective. They failed to present any evidence to
24 support this assertion.

25 (2) Contrary to the prosecution's theory,

1 all of the evidence clearly shows that both the pact
2 and protocol were purely of a defensive nature against
3 growth of the menace of communism, and its spread, and
4 the growing armed pressure being exerted by the Soviet
5 Union.

6 I will skip down to the words:

7 These events affected the most vital interests
8 of all nations, especially Japan and Germany. The
9 7th Congress of the Comintern held in Moscow in 1935,
10 adopted a resolution designating Japan and Germany as
11 its primary enemies. (Ex. 484, T. 22486).

12 Of course it cannot be denied that an inseparable
13 relation existed between Soviet Russia and the
14 Comintern. The Japanese Government never lost sight
15 of this fact, as indicated by HIROTA in the Privy
16 Council Session (Exhibit 484, p. 22480). Indeed it was
17 in view of the sinister nature of this relationship
18 between the two organizations that the Japanese Govern-
19 ment considered some international agreement against
20 the Comintern necessary in order to combat the menace
21 of its destructive activities.

22
23 (3) As to the Secret Protocol attached to the
24 Anti-Comintern Pact, its content was also purely de-
25 fensive, having in view only the contingency when one

1 of the participants was unprovokedly attacked or
2 renaced by Soviet Russia. It did, however, not
3 stipulate a mutual assistance between the parties for
4 that event, but only an obligation not to take any such
5 measures as to relieve the situation of Soviet Russia.
6 HIROTA and ARITA explained in the Privy Council how
7 the Soviet Russia strengthened her armament by the
8 Five-Year Plan, and how Japan was feeling the heavy
9 pressure put on her by the vastly increased Soviet
10 Army in the Far East (Exhibit 484, pp. 22480, 22483).

11 HIROTA explained that the object of the pact
12 was simply to make it an instrument for preparing for
13 checking the armed pressure of the Soviet Union and
14 Bolshevistic activities (Exhibit 484, p. 22482). It
15 is indeed a very far-fetched assertion on the part
16 of the prosecution to claim that the Anti-Comintern
17 Pact was converted into a military alliance by this
18 secret agreement. We claim that nothing of a nature of
19 military alliance is included in these agreements.

20 (4) Further statements of HIROTA and ARITA
21 in the Privy Council proved the defensive and peaceful
22 character of the agreements, leaving no room for any
23 doubt in this respect.

24 Both declared that Japan should of course
25 refrain from taking any positive measures which might

1 aggravate relations with the Soviet Union, and would
2 always do its utmost to maintain and promote amicable
3 relations with Britain (Ex. 484, p. 22482).

4 The assertion of the prosecution that the
5 agreements were directed against all democratic
6 countries of the world is clearly unfounded. Although
7 the object of the secret agreement was the Soviet Union,
8 the defense asserts that it does not constitute a
9 violation of any international law whatsoever to
10 conclude an agreement directed to a specific country,
11 so long as that agreement is defensive and peaceful in
12 nature.

13 (5) The object of the Anti-Comintern Pact and
14 the Protocol were thus clearly limited in scope. It
15 was quite natural that some accessory political results
16 followed this rapprochement between Japan and Germany.
17 For Japan, which was suffering from international
18 isolation, this pact meant an improvement of her
19 position in international politics. This was, of
20 course, not confined to Japan's position vis-a-vis
21 China. From the fact that nobody in the Japanese
22 Government anticipated the outbreak of the China
23 Incident at the time of the conclusion of the Anti-
24 Comintern Pact, we claim that the prosecution's
25 inference that the Anti-Comintern Pact was for the

purpose of furthering Japan's policy in China is
groundless.

Exhibit No. 2762, Affidavit of Ribbentrop,
reads as follows:

"I. Anti-Comintern Pact.

"The Anti-Comintern was primarily an ideological pact," Ribbentrop says under quote. "We Germans did not want to let communism spread. Of course, there was also a political weight against Soviet Russia that was more or less the background of the pact. It is not true that this pact was directed against the democratic countries of the world. On the contrary, I tried hard after the conclusion of the pact to get Great Britain to join it, but was unsuccessful. I never had an impression that Japan might use the pact in her policy toward China or the South Sea area." . . .

(6) The prosecution attaches great importance to the assertion that the Anti-Comintern Pact was the first step for joint aggressive action taken by Japan and Germany. They failed to produce any convincing evidence on this point. A mere fact that the two countries of Japan and Germany at certain intervals concluded agreements or were engaged in negotiations can certainly not be taken as proof that the relations between the two countries were continuous, having

certain definite objects during the whole period.

1 As applies to all international relations, the relation
2 between Japan and Germany was subject to the changes in
3 the world situation. Even after 1936, they completely
4 cooled off. The treaties they concluded, or negotia-
5 tions they attempted were for different purposes each
6 time. The defense thinks that their proof has made it
7 abundantly clear that there was continuity in the
8 Japanese-German relations. This will be further
9 explained in the following pages.

10
11 4. RELATIONS BETWEEN JAPAN AND GERMANY AFTER
12 THE CONCLUSION OF THE ANTI-COMINTERN PACT.

13 (1) The history of Japanese-German relations
14 in China was always that of discord, not that of
15 collaboration. Even after the conclusion of the Anti-
16 Comintern Pact, Germany continued to supply arms to
17 China and kept military advisors with the Chinese
18 Government. Japan considered it an unfriendly act on
19 the part of Germany, in view of the fact that actual
20 hostilities at that time were going on between Japan
21 and China on a large scale, but this situation was
22 not improved until the end of July 1938 (Ex. 594, T.
23 6601). It is clear also from the prosecution's evidence
24 that Germany was opposed to the China Incident at its
25 outset (Ex. 486-A, T. 5980-1). It is admitted that the

1 policy of Germany subsequently changed. But this
2 occurred out of the necessity to adjust her policy
3 to the actual situation then prevailing in China,
4 especially due to the perspective that the China
5 Incident would be prolonged, which was contrary to
6 expectations. The report of Ambassador Dirksen (Ex.
7 486-H, T. 6002-13) shows this clearly. We assert that
8 no evidence was ever produced that Japan and Germany
9 collaborated after the conclusion of the Anti-Comintern
10 Pact in pursuing their respective policies in China.
11 They followed independent courses.

12 (2) Even after the change of the Germany
13 policy in China, the economic question was a continuous
14 source of friction between Japan and Germany. The
15 question of preferential treatment was never settled
16 between the two nations. The interpretation given by
17 the prosecution to exhibit 596 (T. 6623-4) is obviously
18 wrong, as this document shows clearly the refusal by
19 Japan to give Germany preferential treatment in China.
20 Moreover, German protests to Japan with respect to the
21 economic restrictions put on her trade in China never
22 ceased until the end of World War II. The defense con-
23 tends that these facts show further the lack of Japanese-
24 German collaboration in China.
25

(3) As to the prosecution's attempt to

~~attach political implication to the Japanese-German~~
1 cultural agreement, it is pointed out that to agree on
2 cultural matters cannot at any time be considered as
3 offensive to international law. ARITA denied clearly
4 any such political implication of the agreement
5 (Ex. 589, T. 6576).

6 EXPANSION AND RENEWAL OF THE ANTI-COMINTERN
7 PACT.

8 (1) The Anti-Comintern Pact provided in its
9 text that other countries should be invited to join
10 the Pact. On the basis of this provision, Italy,
11 Manchukuo, Hungary and Spain joined the Pact up to
12 March 1939. These adherences were carried out solely
13 from the standpoint of the defense against communism.
14 In the case of Italy's adherence, any political impli-
15 cations which might affect Japan's relations with
16 Great Britain were carefully considered and avoided,
17 as shown by the telegrams from Ambassador Sugimura to
18 Foreign Ministers ARITA and SATO (Exhibits 2615, 2616,
19 2618; pp. 22500, 22,502, 22524). The secret agreement
20 attached to the Anti-Comintern Pact was never communi-
21 cated to any of the joining countries, not even to
22 Italy.
23

24 (2) It is to be noted that the invitations
25 were also extended by Germany to Great Britain and by

1 Japan to Holland. While those two powers declined
2 to join, it shows that the Pact was considered uni-
3 versal in nature and not limited to any special group
4 of powers.

5 (3) The content of the Anti-Comintern Pact
6 was, contrary to the prosecution's assertion, never
7 changed or strengthened. The renewal of the Pact
8 in November 1941 was done as a routine matter of
9 ordinary diplomatic business. The secret agreement
10 was abrogated. (Ex. 2694, T. 23563).

11 **STRENGTHENING OF THE ANTI-COMINTERN PACT.**

12 (1) In 1938 and 1939, negotiations took
13 place between Japan and Germany, at the instance of
14 Germany, for the strengthening of the Anti-Comintern
15 Pact. These negotiations failed completely, and no
16 results were obtained. The prosecution seems to
17 consider them as a forerunner to the Tripartite Pact,
18 which was concluded in September 1940, by including
19 these negotiations in the chapter of "Tripartite Pact."
20 The defense contends that these two items are completely
21 different, and no direct connection existed between the
22 two.
23
24
25

2) The length and the complexity of the
1 negotiations makes it rather difficult to grasp the
2 whole matter correctly. To attempt to outline during
3 the trial the minutes of 70 Five Ministers Conferences
4 which considered this question would involve a
5 separate trial. But the defense contends that the most
6 important criterion by which to determine the nature
7 of the negotiations is whether they were for an aggres-
8 sive purpose, directed to the entire world, as claimed
9 by the prosecution, or whether they were for defensive
10 purpose, which is the fact? There has been no greater
11 waste of time in this whole trial than the unlimited
12 consideration given these abortive proceedings.
13

14 3) In this respect the text of the treaty,
15 in so far as agreed upon by the parties, is the most
16 important evidence. Such a text, tendered by the
17 defense in evidence, stipulates that the duty of mutual
18 assistance would become effective only when one of
19 the signatories was attacked or menaced by a third
20 power, thus showing the defensive nature of the pro-
21 posed agreement (exh. 2619). Ambassador OSHIMA stated
22 (exh. 3508, T. 34,012-13), as corroborated by witnesses
23 USAMI (exh. 3494, T. 33,733) and KAWABE (exh. 3495,
24 T. 33,768), that the purpose of the Japanese Government
25 in considering these negotiations was to facilitate the

1 settlement of the China Incident, and to improve the
2 defense against the increasing armed menace of the
3 Soviet Union. It was the intention of the Japanese
4 leaders to use this agreement, if concluded, for dip-
5 lomatic weight, and not for any aggressive purpose.

6 4) Evidence tendered by the prosecution
7 shows that Japan was very cautious from the outset
8 as to the content of the proposed agreement. The
9 obligation of military aid was not to be instantaneous
10 and unconditional, as suggested by the prosecution.
11 In order to nullify the danger of becoming involved
12 in a purely European conflict against Japan's will,
13 there was to be a conference before Japan entered into
14 any conflict or became obligated to provide military
15 aid. The chief object of the agreement was the Soviet
16 Union. Care was taken to avoid giving the impression
17 that England and the United States were the principal
18 objectives (exh. 3515, T. 34,119).

19 5) The prosecution asserts that Ambassador
20 OSHIMA acted from the outset in contravention of
21 instructions and made commitments to the German side
22 in excess of the policy of the Japanese Government.
23 This matter will be fully discussed in the individual
24 summation for accused OSHIMA. It is only pointed out
25 here that exhibits 3514 and 3515 (T. 34,116-17) were

1 first tendered during the cross-examination of accused
2 OSHIMA, and that he stated that he could not remember
3 the content of the first instructions, although he was
4 sure to have communicated them fully to the Germans.
5 No evidence was tendered that accused OSHIMA acted in
6 contravention of any part of these instructions. On
7 the contrary, the statement made by the ambassador
8 that the first instructions received from Tokyo indicated
9 the Soviet Union as the primary, and other powers as
10 the secondary objectives (ex. 3508, T. 33,998-9) is
11 fully corroborated by the evidence of the prosecution.
12 (Exh. 3514 and 3515, T. 34,116-7.)

13 6) The assertions of the prosecution that
14 OSHIMA, disregarding the instructions of the home
15 government, conspired with Ribbentrop and tried to lead
16 the Japanese Government in the direction desired by
17 him, or that some members of the Five Ministers Con-
18 ference exerted their influence, in combination with
19 OSHIMA, in order to overcome the more moderate view
20 of their colleagues, will be answered in individual
21 summations. It is pointed out here only that the dif-
22 ference of opinions were of a technical nature as to
23 the mode and extent of military assistance, to be given
24 to one of the signatories by other contracting powers,
25 in case the former was attacked by nations other than

the Soviet Union. No aggressive intention was revealed
1 by any of the Japanese leaders during the whole nego-
2 tiations. Near the close the differences resolved
3 themselves to the interpretation of one article,
4 (Stahner's affidavit).

5 5. GERMAN-RUSSIAN NON-AGGRESSION TREATY.

6 1) The negotiations for the German-Russian
7 Non-Aggression Treaty (exh. 2725, T. 24,187), which
8 began as early as spring of 1939 (exh. 2722, T. 24,178;
9 exh. 2724, T. 24,185), were kept secret from Japan.
10 This is acknowledged by the Tribunal when it said:

11 * * * * "Moreover, as Mr. Cunningham pointed
12 out, the Japanese were wholly unaware of the commu-
13 nications passing between Russia and the other coun-
14 tries, more particularly Germany, as contained in
15 those documents." * * * * (T. 38,891.)

16 The German Foreign Office denied the existence
17 of such negotiations upon inquiry from the Japanese
18 Embassy in Berlin (exh. 2723, T. 24,182).

19 The conclusion of the German-Russian Non-
20 Aggression Pact, which was a clear violation of the
21 Secret Protocol of the Anti-Comintern Pact, came as
22 a complete surprise to Japan. This volte-face and
23 bad faith on the part of Germany caused extreme anger
24 and indignation in Japan. The Japanese Government
25

1 protested to Germany at once in Tokyo and Berlin, and
2 declared the severance of the negotiations for the
3 strengthening of the Anti-Comintern Pact (exh. 486-L,
4 T. 6122-3). At the same time the Japanese Ambassador
5 in Washington communicated to the United States
6 Secretary of State the change of the attitude of the
7 Japanese Government, and stated that Japan would adopt
8 a new foreign policy (exh. 2727, T. 24,197).

9 2) In Japan internally and politically the
10 German-Russian Treaty caused the downfall of the
11 HIRANUMA Cabinet (exh. 2728, T. 24,202-4). The succeed-
12 ing cabinet ABE was formed with the explicit instruction
13 of the Emperor that the diplomatic policy should
14 follow the line of cooperation with Britain and the
15 United States (exh. 2272, T. 16,241). Thus the com-
16 plete reorientation of the Japanese foreign policy was
17 clearly indicated.

18 As to the indignation caused in the Japanese
19 army circle, which was considered as pro-German in
20 some respects, the report of the Italian military
21 attache in Tokyo, as referred to in the telegram from
22 Mackensen in Rome to Berlin (exh. 2726, T. 24,190-2),
23 is the best illustration. Even the rupture of dip-
24 lomatic relations was feared, in some circles.

25 3) It is the contention of the defense that

1 this German-Russian Non-Aggression Treaty marked the
2 complete cooling-off of the Japanese-German relations.
3 Not only were the pending negotiations cut off, but
4 the interstate relations were jeopardized. This result
5 followed regardless of the German efforts to appease
6 Japan, on which subject some evidence was tendered by
7 the prosecution. This expressed nothing but a purely
8 one-sided view of Germany, however.

9 4) The ABE Cabinet appointed Admiral NOMURA,
10 who became later the Japanese Ambassador to the United
11 States, as Foreign Minister, and endeavored, in line
12 of reorientation of the Japanese foreign policy, to
13 improve above all the diplomatic and commercial
14 relations with the United States. The statement on
15 non-involvement in the European war (exh. 2729,
16 T. 24,206) issued on 4 September 1939, shortly after
17 the formation of the cabinet, was the first clear
18 indication of the new policy, adopted under the
19 reorientation program.

20 Foreign Minister NOMURA took up the conver-
21 sations with Ambassador Grew in order to prevent the
22 Japanese-American commercial relations from falling
23 into the treaty-less status; such a condition was feared
24 as a result of the notification by the United States
25 to Japan of the abolition of the Japanese-American

commercial treaty (exh. 994, T. 9,602). As a major
1 concession on the Japanese side to the demands of the
2 United States, Admiral NOMURA offered to
3 reopen the lower reaches of the Yangtze River for navi-
4 gation. He stated that if by making this concession,
5 no effective results were seen from the standpoint of
6 improving international relations, the government
7 would be attacked by public opinion; the result would
8 be that relations between Japan and the United States,
9 instead of improving would tend towards the opposite
10 direction and so proceed to a point which it would be
11 difficult to estimate. Foreign Minister NOMURA
12 appealed to the United States Government to enter into
13 negotiations for a new commercial treaty (exh. 2730,
14 T. 24,209-12). The United States declined (exh. 2731,
15 T. 24,213-15). Even the Japanese proposal for concluding
16 a modus vivendi was rejected (exh. 2732, T. 24,216-19).
17 The strong speech (straight from the horse's mouth)
18 made by Ambassador Grew on 19 October 1939 upon his
19 return from the vacation in the United States,
20 denouncing every feature of the Japanese policy in
21 China (exh. 2736, T. 24,313-26), incensed the public
22 opinion in Japan and increased the difficulties of the
23 government. Such a result can be seen from the reports
24 sent by the German and American Ambassadors to their
25
26

home governments on the reaction of the Japanese public

1 to the speech (exh. 2737, T. 24,326-7; exh. 2738,
2 T. 24,328-31). The failure of the NOMURA endeavors
3 for improving the relations with the United States
4 brought about the downfall of ABE Cabinet. The YONAI
5 Cabinet succeeded the ABE; its approved foreign policy
6 was directed to renewing the efforts for a rapproche-
7 ment with the Anglo-Saxon powers.
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5) During the tenure of office of these
1 two cabinets, the relations with Germany remained
2 extremely cool. Eugen Ott complained to MATSUOKA
3 on 1 August 1940 that up to that time he was disregarded
4 and treated almost with contempt by the Japanese Foreign
5 Office, (Ex. 545, T. 24,231-2). Absolutely no continuity
6 existed in the Japanese-German relations.
7

8 6) The success of the German army in Europe,
9 especially the occupation of Holland and the surrender
10 of France, created a new situation also in East Asia.
11 Japan naturally feared the emergence of victorious
12 Germany in East Asia as successor to France and Holland.
13 At the same time, among the people of Japan, suffering
14 under the pressure of the China Incident and the feeling
15 of international isolation, which was aggravated after
16 the failure of the rapprochement with the Anglo-Saxon
17 powers, strong opinion urging a closer relation with
18 Germany was formed. These circumstances compelled
19 the Government to reconsider the relations with Germany,
20 in order at least to sound out the intention of that
21 country, in respect to its interests in East Asia. The
22 evidence tendered by the prosecution as to the Japanese-
23 German contacts concerning Netherlands East Indies and
24 French Indo-China (Ex. 517, T. 6156; Ex. 518, T. 6159;
25 Ex. 519, T. 6161; Ex. 520, T. 6162) shows nothing but

1 this normal diplomatic maneuver. Germany was reluctant
2 to acknowledge Japan's position (Ex. 521, T. 6166).
3 Concerning the conversation between SATO and KURUSU
4 and Ribbentrop and Stahmer, it is submitted that SATO
5 went originally to Italy on an official mission, and
6 visited Germany only unofficially (Ex. 2733, T. 24,228-9,
7 T. 28,960). The conversation was confined to mutual
8 sounding of the other's intentions, the Japanese side
9 showing considerable mistrust vis-a-vis Germany. This
10 is clearly shown by the subsequent exchange of telegrams
11 between KURUSU, SATO and ARITA, (Ex. 525, T. 6186;
12 Ex. 526, T. 6189; Ex. 1020, T. 9694, T. 24,230). This
13 can certainly not be taken as an evidence for Japanese-
14 German collaboration.

15 7) The joint conference of the Japanese army,
16 navy and Foreign office in July 1940 (Ex. 527, T. 6191-
17 6206; Ex. 528, T. 6214-30) covered only a routine study
18 of the international situation. Their meetings were
19 often carried out in the Japanese Ministries of that
20 time. No evidence was offered that this study influenced
21 the foreign policy of Japan to any great extent. ARITA,
22 then Foreign Minister, stated in his cross-examination
23 that he instructed his subordinates at that time to
24 conduct some kind of study to bring about closer
25 relations between Germany and Japan insofar as it would

not aggravate Japan's important interests. He never
1 received any reports before the cabinet resigned
2 (T. 28,966, 28,967-8).

3 8) The cause of the resignation of the
4 YONAI Cabinet will be fully discussed in the individual
5 summations. It is pointed out here that the prosecution's
6 assertion that the cabinet fell in order to facilitate
7 the conclusion of the Tripartite Pact is without
8 foundation.

9
10 6. THE TRIPARTITE PACT.

11 1) The newly born KONOYE Cabinet in the
12 summer of 1940 was not at all sure of the attitude of
13 Germany. Foreign Minister MATSUOKA took great pains
14 to sound out the German attitude through Ambassador
15 Ott in Tokyo and KURUSU in Berlin (Ex. 545, T. 6288-92;
16 Ex. 542, T. 6278-81). As a result thereof, Heinrich
17 Stahmer was dispatched by Ribbentrop to Tokyo, in order
18 to find out the true intention of Japan (Ex. 2744,
19 T. 24,404-5).

20 2) On hearing the report of the dispatch of
21 Stahmer from KURUSU in Berlin, the Japanese Government
22 decided in the meantime on a policy vis-a-vis Germany
23 to meet all eventualities. This is the recorded
24 decision of the Four Ministers Conference of 4 September
25 1940 (Ex. 541, T. 6307-21). While this decision

1 included many important matters of far-reaching
2 consequence, it is submitted that nothing in it
3 indicates any aggressive policy of Japan. This
4 decision of 4 September was never communicated to
5 Germany, and could not be considered as the basis of
6 any Japanese-German agreement. Admittedly, the
7 possibility of war breaking out was carefully considered,
8 but under the international circumstances then prevailing,
9 it was only natural for every great power to keep close
10 watch and not to lose sight of such a possibility
11 in studying the formation of future diplomatic policy.

12 3) At the conference after the arrival of
13 Envoy Stahmer in September 1940, negotiations were
14 conducted by Foreign Minister MATSUOKA alone on the
15 Japanese side (Ex. 3144, T. 27,984). The record of
16 conversations between MATSUOKA, Stahmer and Ott on
17 9 and 10 September 1940, tendered in evidence by the
18 prosecution (Ex. 549, T. 6323) is an important document
19 showing the understanding between the parties. This
20 discussion formed the basis of the Tripartite Pact.
21 Stahmer told MATSUOKA in this conversation, assuring
22 that his words can be taken as coming directly from
23 Ribbentrop, that: (1) Germany did not want the present
24 conflict to develop into a World War, and wished to
25 bring it to termination as quickly as possible;

1 (2) Germany did not look for Japan's military assistance
at this juncture in connection with her war with England;

2 (3) What Germany wanted of Japan was to have Japan
3 play the role of restraining and preventing the U.S.
4 from entering the war, by all means; (4) A strong
5 and determined attitude, unequivocal and unmistakable,
6 on the part of the three nations, Japan, Germany and
7 Italy, and the knowledge of it by the U.S. and the world
8 at large at this juncture, that alone could be of a
9 powerful and effective deterrent on the United States;

10 (5) Germany was prepared to act the part of intermediate
11 broker on the question of rapprochement between Japan
12 and Soviet Russia; (6) Germany would make use of
13 every means in her power to prevent the clashing between
14 the United States and Japan, and even to improve the
15 relations between the two, if it could be considered
16 humanly possible.

17
18 4) The attitude of Germany coincided with
19 the Japanese policy at that time, and on the basis
20 of this understanding the Tripartite Pact between
21 Germany, Italy and Japan was signed in Berlin on 27
22 September 1940. Prince KONOYE wrote in his memoir
23 that the purpose of the Tripartite Pact was first to
24 prevent the United States from participating in the
25 war in Europe, and secondly, to secure friendly relations

1 between Japan and Soviet Russia. He thought that a
2 coalition between Japan, Germany and Russia alone
3 would enable Japan to make her voice weightier
4 against the Anglo-American combination and thus facilitate
5 the settlement of the Sino-Japanese conflict. Even
6 KONOYE, who was an ardent supporter of Japanese-American
7 understandings, felt at that time that every normal
8 approach to the American Government had been closed,
9 and that in order to force America to give up the
10 idea of coercing Japan, the only possible way left
11 open to Japan was to take sides with Germany and Italy,
12 and through Germany with the U.S.S.R. as well. Only
13 when such an equilibrium of power had been attained
14 against the Anglo-American combination, would rapprochement
15 with America become possible. The ultimate aim of
16 Japan's attempt to combine with Germany and Russia
17 lay also in the adjustment of Japan's relations with
18 America, and, as a result of such adjustment, the
19 settlement of the long conflict with China (Ex. 2735-A,
20 T. 24,294; 24,297-9) was sought. MATSUOKA explained
21 at the Imperial Conference preceding to the conclusion
22 of the pact that in view of the coercive attitude of
23 the United States, there was nothing left for Japan
24 to do but to stand firm. Japan must cope with America
25 by firmly joining hands with as many countries as

possible, to back up her firm attitude, and by making
1 the fact known at home and abroad as quickly and as
2 clearly as possible. MATSUOKA will always be careful
3 not to overlook an opportunity to improve relations
4 with America, (Ex. 550, T. 6341-3). Witness SAITO,
5 testified that MATSUOKA told him this. Since the
6 American policy was so high-minded, Japan cannot
7 oppose America single-handed with her own power, Japan
8 must shake hands with some other strong powers: MATSUOKA
9 told him further that once the Tripartite Pact was
10 concluded, he (MATSUOKA) must pour all his wits and
11 abilities into the establishment of world peace (Ex.
12 3143, T. 27,969, 27,972-3). These statements, corrobor-
13 ating each other, show the peaceful purpose of the
14 Tripartite Pact.
15

16 Article V reads as follows:

17 "Japan, Germany and Italy shall confirm that
18 the above stated articles of this alliance have no
19 effect whatsoever to the present existing political
20 relation between each or any one of the signatories
21 with Soviet Union." (Ex. 43, T. 6391).
22

23 5) Another important point in determining
24 the character of the Tripartite Pact is the fact that
25 this Pact was completely different from the proposed
pact of 1938 and 1939, negotiations for which failed

1 upon the conclusion of the German-Russian Non-Aggression
2 Treaty. Prince KONOYE wrote in his memoir that there
3 was a fundamental difference in nature between the
4 two plans, inasmuch as the objectives were different
5 (Ex. 2735-A, T. 24,291). MATSUOKA explained at the
6 Imperial Conference in September 1940 that the
7 fundamental principle of the recent negotiations with
8 Germany was entirely different from that of HIRANUMA
9 Cabinet days (Ex. 550, T. 6341). Moreover, witness
10 SAITO stated that MATSUOKA did not even look into the
11 records of the previous Japanese-German negotiations
12 (Ex. 3143, T. 27,979-80). The prosecution's contention
13 that the Tripartite Pact was the continuance of the
14 abortive negotiations of 1938 and 1939 is clearly a
15 mistake, is contradicted by the record.

16
17 6) The prosecution asserts that the preamble
18 and the provisions of Articles I and II of the
19 Tripartite Pact indicate the intention of the three
20 countries to divide and dominate the world.

21 Regardless of the question whether it is of
22 itself a crime in international law for any power to
23 try to dominate a part of the world, the Imperial rescript
24 issued on the day of the conclusion of the Pact (Ex. 554,
25 T. 6394), the contemporary statements of KONOYE (Ex.
2734, T. 24,276; Ex. 2741, T. 24,370) and MATSUOKA

(Ex. 2740, T. 24,357), as well as speeches by the
1 subsequent Foreign Minister TOYODA and TOGO (Ex. 2742,
2 T. 24,374; Ex. 2743, T. 24,375) show no sign that such
3 an idea was entertained by Japan. At least so far as
4 Japan was concerned, the preamble of the Tripartite
5 Pact embodies the traditional ideal of peace entertained
6 by Japan throughout her long history. As to this
7 Japanese ideal of peace, explanation will be offered
8 in other divisions of the defense.
9

10 Article III of the Pact provides that, if
11 and when anyone of the signatories be attacked by
12 any third power not presently engaged in the present
13 European war or the China Incident, the other two
14 shall aid her in any way. Thus its purport was clearly
15 defensive. It was further agreed upon that the question
16 of whether or not a contracting party has been attacked
17 within the meaning of Article III of the Pact would
18 be determined upon consultation among the three con-
19 tracting powers (Ex. 555, B, T. 6398) indicating that
20 one power would not be bound by the finding of other
21 powers. Each power could make a decision quite
22 independently of the others. Japan succeeded by this
23 agreement to prevent being drawn automatically into
24 the war, for instance, by the outbreak of a German-
25 American war, thus reserving her independence of action.

1 It is, moreover, pointed out that same provisions as
2 this article were also included in the British-Polish
3 and British-French-Turkish Treaties, both concluded
4 in 1939 prior to the Tripartite Pact.

5 7. JAPANESE-GERMAN RELATIONS AFTER THE
6 CONCLUSION OF TRIPARTITE PACT

7 1) The Tripartite Pact was concluded on the
8 basis of the understanding that it was an instrument
9 of politics. Soon after the pact had come into life,
10 important changes in the world situation took place.
11 The close collaboration between Japan, Germany and
12 Italy as envisaged by the Pact was made impossible,
13 almost from the outset. That the Pact failed to fulfil
14 the basic minimum requirements to be useful for any
15 political purpose of Japan was soon recognized. Of
16 course, there were many diplomatic discussions on
17 each side. But even during the war, which the three
18 countries fought as allies, there was no close collabor-
19 ation. This was more true at the time before the out-
20 break of the Pacific war. We assert that the Tripartite
21 Pact was not evidence of a criminal conspiracy between
22 Japan, Germany and Italy, but state that it did not
23 contribute at all toward a closer collaboration between
24 the three countries.
25

2) The first question put by Germany to Japan

1 soon after the conclusion of the Pact was the
2 Singapore question. Germany began to try, contrary
3 to the terms of the Pact and the understanding which
4 preceded the conclusion of the Pact, to induce Japan
5 to an attack on Singapore. The defense admits that
6 Germany used every means to accomplish this purpose,
7 but asserts that nowhere in any of the prosecution's
8 documents can any evidence be found that the Japanese
9 Government or any individual of Japan did ever consent
10 to the German urgings. The study of Ott about the
11 possibilities of a Japanese attack on Singapore (Ex.
12 562, T. 6430-4) was carried out solely on Ott's initiat-
13 ive, without any participation from the Japanese side.
14 (Ex. 3646, T. 28,019).

15 Witness Kretschmer, who actually conducted
16 the study as the Military Attache, testified in his
17 cross-examination that the study was made on Ott's wish
18 and for purely internal purposes, that the Germans at
19 that time, as often afterwards were kept in ignorance
20 about the Japanese intentions.
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1 He stated further that he was quite sure that
2 the Japanese did not receive any information about this
3 strategical study via the German Embassy. (Ex. 2751,
4 T. 24624-5.) Ott stated in his affidavit that he made
5 the survey on the possibilities of a Japanese attack on
6 Singapore in early 1941, through his own initiative.
7 (Ex. 3146, T. 28019-20.) In the conversations between
8 OSHIMA and Ribbentrop and Weizsacker in February, 1941,
9 the Singapore question was mentioned. But the matter was
10 brought out by the Germans, and OSHIMA did not give any
11 commitments except usual diplomatic answers. (Ex. 570,
12 T. 6457; Ex. 571, T. 6459-67.) The attitude of OSHIMA
13 will be discussed in the individual summation. The
14 directive No. 24 of the Fuehrer (Ex. 573, T. 6469-73), or
15 the instruction of Ribbentrop to Ott (Ex. 572, T. 6468)
16 to try to induce Japan to an attack on Singapore are
17 purely German documents, completely unknown to the Japa-
18 nese side. During the conversations of MATSUOKA and
19 Hitler (Ex. 577, T. 6485; Ex. 582, T. 6538), Ribbentrop
20 (Ex. 578, T. 6499; Ex. 579, T. 6513; Ex. 580, T. 6522;
21 Ex. 583, T. 6546) and Goering (Ex. 581, T. 6534) in
22 March and April, 1941, in Berlin, the Singapore question
23 was again raised by the German side.
24
25

1 Although we firmly contend that the so-called
2 records of conversations prepared by the German side can-
3 not be solely relied upon for the purpose of finding out
4 what was really talked about there, even these German
5 documents show that MATSUOKA mostly talked for himself;
6 expressed his personal opinions, and did not make any
7 commitments to the Germans. He asked the Germans that
8 the matter discussed be kept secret from the Japanese
9 Government (Ex: 582, T. 6545.) In view of the attitude
10 of MATSUOKA it is quite clear, regardless of the question
11 whether MATSUOKA was in good faith or not, that these
12 conversations cannot be taken as evidence of Japanese-
13 German agreement. In the International Court of Nuern-
14 berg evidence was tendered by the prosecution that Hitler
15 did not tell the truth to MATSUOKA in order to camouflage
16 his decision to make a surprise attack on Russia (Ex.
17 2750-4, T. 24613-4.) As to the attitude of MATSUOKA,
18 witness NAGAI testified that prior to MATSUOKA's depart-
19 ure from Tokyo in February, 1941, the Chief of the Army
20 General Staff made a request to MATSUOKA not to make any
21 operational or strategical commitment to Germany, and he
22 (NAGAI) was specifically reminded by the Chief of the
23 General Staff to assist MATSUOKA concerning this point.
24 MATSUOKA promised to NAGAI during the trip that no com-
25 mitment would be given to Germany. In Berlin, NAGAI

1 heard from MATSUOKA, although informally, that when the
2 Singapore question was raised during the conversation
3 with Hitler and Ribbentrop, MATSUOKA did not commit any-
4 thing to the Germans (Ex. 2747, T. 24580-1.) Witness
5 SAITO also stated in corroboration of NAGAI's testimony
6 that MATSUOKA after his return to Tokyo told SAITO that
7 he (MATSUOKA) did not make any promise with reference to
8 an attack on Singapore, nor did he say anything to com-
9 mit himself (Ex. 3143, T. 27971-2.) MATSUOKA requested
10 through Ott the German Foreign Office that the records
11 of his conversations in Berlin be handed to him (Ex.
12 2749, T. 24585) but the German side refused on the ground
13 that no records were made by the German Foreign Office
14 as a matter of principle and Minister Schmidt took note
15 only of catch words for the purpose of translation (Ex.
16 2748, T. 24586.) The prosecution here and the prosecution
17 at Nuernberg have adopted divergent views on the whole
18 Singapore question.

19 3) The fact is that there was no plan of an
20 attack on Singapore prepared by the Japanese military in
21 the spring of 1941. Witness KONDO, Nobutake, who was
22 the deputy Chief of the Naval General Staff from October,
23 1939, until September, 1941, testified that the Japanese
24 Navy had no concrete plans or preparations for an attack
25 on Singapore in February or March, 1941 (T. 26677-82.)

1 Witness TANAKA, Shinichi, who was the Chief of the First
2 Section (Operational Planning) in the General Staff
3 Office from October, 1940, to December, 1942, testified
4 that in the peacetime operational plan for 1941, plans
5 for operations in the Southern area were left out of
6 consideration, and even the study prerequisite for the
7 defense of that area was left incomplete or untouched.
8 (Ex. 3027, T. 26996.) This evidence should suffice that
9 there was, and there could have been, no agreement be-
10 tween Japan and Germany as to an attack on Singapore in
11 1941.

12 This whole question as Ribbentrop said was
13 created for propaganda purposes, to get Japan involved
14 in the war against England.

15 4) The second point of issue between Japan and
16 Germany was the question of Soviet Russia. As shown
17 above, one of the purposes of the Tripartite Pact was
18 the improvement of relations with the Soviet Union, and
19 Germany promised to act as a go-between for bringing about
20 a better understanding between Japan and Soviet Russia.
21 Indeed Ribbentrop proposed to Russia in November, 1940,
22 a four powers pact including Japan, Germany, Italy, and
23 Russia, as shown by a memorandum sent to the Japanese
24 Government (Ex. 2735-A, T. 24300-1.) But this proposal
25 failed, according to the German views. When MATSUOKA

1 arrived in Berlin in March, 1941, he found there a
2 totally different situation awaiting him. Both Hitler
3 and Ribbentrop indicated that their relations with
4 Soviet Russia were deteriorating, and Germany was taking
5 precautionary military measures for all eventualities.
6 When MATSUOKA brought out the question of concluding a
7 Japanese-Russian Non-Aggression Treaty, Ribbentrop tried
8 to discourage him, although he did not oppose the idea.
9 In the face of such an attitude of Germany, MATSUOKA
10 concluded the neutrality treaty with the Soviet Union
11 pursuant to the pre-determined Japanese foreign policy.
12 This was an unpleasant surprise to Ribbentrop who ex-
13 pressed his antipathy to this Japanese policy (Ex. 2735-A,
14 T. 24303.) Thus was complete reversal of the Germany-
15 Soviet policy subsequent to the conclusion of the Pact
16 (Three Powers), any collaboration between Japan and
17 Germany was impossible after that.

18
19 After April, 1941, the question of the German-
20 Russian war became acute. Although Germany did not give
21 Japan any definite notice of her decision to go to war
22 against Russia, the Government of Japan, roused by
23 alarming telegrams received from OSHIMA, felt great con-
24 cern about the trend of events. A clash between Germany
25 and Russia would nullify one of the main purposes of the
~~Tripartite Pact: MATSUOKA on 28 May 1941 sent a message~~

1 on behalf of the Government to Ribbentrop to the effect
2 that, in view of the external as well as internal situ-
3 ation in Japan, he (MATSUOKA) wished the German Govern-
4 ment to avoid any armed conflict with Russia and to use
5 every means at its disposal (Ex. 2735-A, T. 24303-4.)
6 Disregarding this advice of Japan, Germany attacked
7 Soviet Russia on 22 June 1941. Prince KONOYE felt that
8 by this German breach of faith the Tripartite Pact had
9 been deprived of most of its practical usefulness. The
10 desire that Japan, Germany, and Russia might remain
11 friendly had now been shattered. KONOYE even considered
12 the desirability of denouncing the Pact outright in view
13 of the - - - - - changes in the circumstances after its
14 conclusion. (Ex. 2735-A, T. 24305-6.) Such was the
15 effect that the German-Russian war exerted on the Tri-
16 partite Pact.

17 5) Having launched into a life-and-death
18 struggle with Russia, Germany wanted to mobilize Japan's
19 help in order to secure a speedy victory. Ribbentrop
20 appealed to MATSUOKA with a personal appeal, but
21 MATSUOKA of course refused it, as the proposal was in
22 contravention of the mutual understandings exchanged at
23 the time of the Tripartite Pact. (Ex. 3143, T. 27971.)
24 This urging to go to war against Russia was repeated by
25 the Germans very often thereafter, as seen from many

German documents tendered by the prosecution.

1 The defense admits that, but at the same time
2 it contends that these documents show nothing but one-
3 sided intention of Germany. Germany, after entering into
4 a do or die struggle with Soviet Russia, was particularly
5 anxious to get Japan to join the war, and Ribbentrop and
6 others used every means to move the Japanese Government
7 to that end, through OSHIMA or Ott. But these documents
8 clearly show that Japan always, politely but firmly,
9 refused the German request. It is pointed out that as
10 this request was repeated by Germany also after the out-
11 break of the Pacific War, the refusal of Japan had to be
12 couched in a very courtcous and diplomatic language, as
13 could not be otherwise between the allies. (Ex. 3822-A,
14 T. 37961; Ex. 812, T. 8014.) However, there is no
15 contrary evidence to the fact that Japan continued to
16 refuse the German requests. Japan and Germany were
17 opposed on this issue. This is clearly expressed by
18 Ribbentrop when he says:

20 *****"VIII. German-Russian War.

21 "After the Russian War broke out, I tried to
22 get Japan against Soviet Russia. I told OSHIMA that it
23 would be most useful if Japan would go against Soviet
24 Russia. Judging from the attitude of OSHIMA and the
25 Japanese Government, I got the impression that Japan did

1 everything possible to keep out of the conflict with
2 Soviet Russia and to keep from antagonizing Soviet Russia
3 in any way."***** (Ex. 2762, T. 24742.)

4 6) The third issue between Japan and Germany
5 was the question of the United States. One of the main
6 objects of the Tripartite Pact was to keep the United
7 States out of the war. Japan's earnest desire was to
8 improve the relations with the United States after im-
9 proving her political position by the conclusion of the
10 Tripartite Pact. MATSUOKA tried every means to find a
11 clue for this purpose immediately after the signing of
12 the Pact, as testified to by witness SAITO. (Ex. 3143,
13 T. 27973-7.) He had talks with Steinhardt, American
14 Ambassador to Russia, during his stay in Moscow in April,
15 1941, and emphasized Japan's peaceful intentions under
16 the Tripartite Pact, and expressed his desire for trust
17 in him by President Roosevelt and the Secretary of State.
18 (Ex. 2757, T. 24717-21.) The Japanese Government took up
19 the preliminary negotiations with the United States in
20 April, 1941, in a sincere expectation of peace as also
21 indicated by the above attitude of MATSUOKA. Germany
22 appeared to be very much opposed to the negotiations from
23 the outset, fearing that the political effect of the Tri-
24 partite Pact might be weakened. (Ex. 2758, T. 24722-3.)
25 When the first Japanese reply was dispatched to the

1 United States without waiting for German opinion, Germany
2 was very angry and demanded a full participation in the
3 negotiations. (Ex. 2759, T. 24724-6.) Japan did not
4 concede, and after Admiral TOYODA had become Foreign
5 Minister, no communication was made to Germany as to the
6 progress of the negotiations, in spite of repeated
7 German requests. Ott reported on 30 August 1941 how he
8 was refused by TOYODA to have the text of the message of
9 KONOYE to President Roosevelt. (Ex. 2760, T. 24727-9.)
10 This attitude was also maintained by TOGO as Foreign
11 Minister. As a result of it, the German suspicion to-
12 wards Japan rapidly increased to such an extent that on
13 1 October 1941 OSHIMA reported to Tokyo that if this
14 state should continue there was no telling what steps
15 Germany may take without consulting Japan. (Ex. 2761-A,
16 T. 24732-35.) On the other hand, Foreign Minister
17 TOYODA denied in July, 1941, emphatically to Ambassador
18 Grew that there was a basis for the American suspicion
19 that the Japanese advance into Southern French Indo-China
20 was carried out by German pressure, and stated that Japan
21 was not such a state that would do anything because of
22 the pressure of Nazi Germany. (Ex. 2754, T. 24694; Ex.
23 2755, T. 24705.) Ambassador Grew wrote in his diary of
24 18 August 1941 how TOYODA asked him to keep the negoti-
25 ations strictly secret from Germans and Italians. (Ex.

1 2756, T. 24711.) It is clear from the above evidence
2 that there was no collaboration between Japan and
3 Germany at that time, and Japan's policy was evidently
4 directed towards a better understanding with the United
5 tes, always at the risk of an enstrangement with
6 Germany.

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1 7) But Germany could not afford to lose
2 Japan from among her friends, especially after her
3 war plan in Russia had failed. Therefore, she quite
4 obviously made it her policy to try to incite Japan
5 to an active policy towards the United States and
6 Great Britain. The evidence offered by the prosecu-
7 tion as to the contacts between OKAMOTO, Ott and
8 Kretschmer (Ex. 601, Tr. 6638; Ex. 602, Tr. 6640),
9 and the conversations between OSHIMA and Ribbentrop,
10 (Ex. 603, Tr. 6644-50) in November 1941, is a proof
11 of such an attitude of Germany. OKAMOTO's contact
12 with Kretschmer and Ott was made only in carrying
13 out of his duty to collect information; this cannot
14 be taken as showing any agreement between the two
15 countries. Besides, there is no evidence to support
16 the prosecution's assertion that the unilateral
17 statement of Ribbentrop to OSHIMA on 28 November
18 1941 was the result of this unofficial contact
19 between OKAMOTO and Ott and Kretschmer.

21 8) The war between Japan and the United
22 States came as a complete surprise to Germany.
23 Ribbentrop testified on 30 March 1946 in Nuernberg
24 that Germany tried to move Japan to attack Singapore
25 and Soviet Russia (which Japan had refused), but
Japan's attack on the United States was for Germany

1 a complete surprise (Ex. 3524, Tr. 34351-54). He
2 repeated this statement in his affidavit for use in
3 this Tribunal (Ex. 2762, Tr. 24742). Schmidt stated
4 as a witness in Nuernberg that the report of Pearl
5 Harbor attack was at first believed to be false in
6 the German Foreign Office (Ex. 2763-A, Tr. 24750).
7 Kretschmer testified that on the eve of the Pearl
8 Harbor attack he, together with the attaches of other
9 countries, was invited to Kabuki and a dinner party
10 by the Japanese army (Tr. 24660). Ott stated that
11 the Japanese attack came as a complete surprise to
12 him and to the other members of his staff, and he was
13 officially informed hours after the occurrence
14 (Ex. 3146, Tr. 28021).

15 Moreover, it is a significant fact that the
16 German declaration of war against the United States
17 was made without referring to the Tripartite Pact,
18 as an independent action on the part of Germany, as
19 seen from the text of that declaration (Ex. 2764,
20 Tr. 24752-3). Ribbentrop said that Hitler considered
21 that a virtual state of war existed between the
22 United States and Germany since President Roosevelt's
23 Navy Day speech in which he ordered the United States
24 Navy to "shoot on sight." (Ex. 2762, Tr. 27742).

25 9) On the other hand, the Japanese decision

1 to go to war against the United States was made
2 altogether independently of Germany and Italy and
3 without expecting any assistance German might be
4 able to give to Japan. According to witness YAMAMOTO,
5 Kumaichi, Foreign Minister TOGO stated that in the
6 event of war with America, Japan could expect no
7 help from Germany, and at the Liaison Conference
8 the Army and Navy High Command were both in agreement
9 with Foreign Minister TOGO that no help or assistance
10 could be expected from Germany (Tr. 26121-2). Witness
11 TANAKA, Shinichi, testified that the Japanese Army
12 thought that it could not expect any strategical aid
13 from Germany, as Germany was absorbed in the European
14 war and her military power was never limitless. In
15 view of the fact that Germany was not a big naval
16 power and situated remotely from East Asia and the
17 Western Pacific (Ex. 3027, Tr. 26995), no assistance
18 was possible.

19
20 10) The Non-Separate Peace Treaty of
21 11 December 1941 (Ex. 51, Tr. 6668-70) and the Military
22 Agreement of 18 January 1942 (Ex. 49, Tr. 6681-6) were
23 both concluded after the three countries of Japan,
24 Germany and Italy had come into war as allies. They
25 were nothing but quite ordinary and natural decisions
to be agreed upon among the allies in a war. These

1 two agreements were singularly ineffective. Italy,
2 and then Germany, surrendered one by one to the Allies
3 in spite of the Non-Separate Peace Treaty. Cooperation
4 on the operational field between the three powers
5 during the war was nonexistent. General Marshall
6 wrote in his book that there was no evidence of close
7 strategic coordination between Germany and Japan, and
8 that it is believed that Japan acted unilaterally
9 and not in accordance with a united strategic plan
10 (Ex. 2765A, Tr. 24755). Admiral NOMURA, Naokuni,
11 testified that the basic idea of the Military Agreement
12 was that the best coordinated operational result might
13 be expected through independent activities of each
14 navy in its respective designated area; therefore each
15 navy conducted its operations entirely under its own
16 plans and abilities, and no special meetings were held
17 for the coordination of the operational activities of
18 the three nations. He further stated that in about
19 March or April 1942 the German and Italian navy made
20 repeated proposals to the effect that they were desirous
21 of seeing the Japanese navy intensify its activities in
22 the Indian Ocean including offensive action against
23 the American transportation activities, but the Japanese
24 navy declined (Ex. 3000, Tr. 26571-3). Both Admiral
25 Wenneker and General Kretschmer, German Naval and

1 Military Attache in Tokyo during the war, testified
2 that there was no collaboration between the Japanese
3 and German services. Wenneker stated that relative
4 to cooperation between Japan and Germany in regard
5 to submarine warfare the utter lack of cooperation
6 would be the better topic for discussion, and that
7 Germany lost two auxiliary cruisers, three submarines
8 and six steamers in Japanese waters during the war
9 mostly due to lack of cooperation (Ex. 2999, Tr.
10 26556-7). Kretschmer testified that the almost daily
11 explanations of the situation in the Far Asiatic
12 theater of war were confined to just what happened,
13 and the Japanese information about Soviet Russia was
14 always very sparse and often worthless; the same
15 reluctance as in Tokyo was manifested by German High
16 Command concerning the war in the European theater
17 (Ex. 2751, Tr. 24618-9). Indeed, Japan and Germany
18 were fighting separate wars. There is a very clear
19 contrast with the close collaboration which existed
20 on the allied side, its Joint High Command, Joint
21 Chief of Staff, Lend-Lease Agreement, and countless
22 allies.
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11. The defense proved with abundant evidence that the Mixed Commissions created by the Tripartite Pact did not function. As to the Commission in Tokyo, Kretschmer testified that from December 1940 until the end of the war there were only two sessions jointly for General, Military and Economic Commissions, and they were only empty propagandistic performances; the intentions of these ineffective gestures were to be used as a camouflage. Nothing was done in Tokyo which could be called a cooperation between the German and Japanese High Commands (exh. 2751, tr. 24,616). As to the Commission in Berlin, Admiral NOMURA stated that although the Mixed Commission was hastily inaugurated after the outbreak of the Pacific War, it was not more than a perfunctory meeting and was held only two or three times in the earlier stage of the war, followed by no meeting at all, later on (exh. 3000, tr. 26,569). His testimony is corroborated by the affidavit of KOMATSU, Mitsuhiro (exh. 3505, tr. 33,961-2). The prosecution's assertion that important matters were discussed by an unofficial commission of OSHIMA and Ribbentrop is indeed a curious one, for it is usual in the diplomatic procedure that important matters are taken up between the Foreign Minister and the Ambassador, without need for any commission. Moreover, the evi-

1 dence which the prosecution calls a complete working
2 program for the economic commission in Berlin (ex. 598,
3 tr. 6630-4) is a document destined for purely internal-
4 German consumption, and no one on the Japanese side
5 had ever seen it.

6 Although there were countless additional
7 items of proof we will not at this time present them
8 in any detail, because they are included in the individual
9 summation.

10 At this time we proceed to analyze Count V
11 of the Indictment, which deals specifically with
12 Germany, Italy and Japan.

13
14 C O U N T 5

15 All the defendants together with divers other
16 persons, between the 1st of January, 1928, and the 2nd
17 September, 1945, participated as leaders, organizers,
18 instigators, or accomplices in the formulation or execu-
19 tion of a common plan or conspiracy, and are respon-
20 sible for all acts performed by themselves or by any
21 person in execution of such plan.

22 The object of such plan or conspiracy was
23 that Germany, Italy and Japan should secure the mili-
24 tary, naval, political and economic domination of the
25 whole world, each having special domination in its own

sphere, the sphere of Japan covering East Asia, the
1 Pacific and Indian Oceans and all countries and islands
2 therein or bordering thereon, and for that purpose
3 should mutually assist one another to wage declared
4 or undeclared war or wars of aggression, and war or
5 wars in violation of international law, treaties,
6 agreements and assurances, against any countries which
7 might oppose that purpose, and particularly against the
8 United States of America, the British Commonwealth of
9 Nations, the Republic of France, the Kingdom of the
10 Netherlands, the Republic of China, the Republic of
11 Portugal, the Kingdom of Thailand, the Commonwealth of
12 the Philippines, and the Union of Soviet Socialist
13 Republics.
14

15 The whole of the Particulars in Appendix A,
16 and of the Treaty Articles in Appendix B, and of the
17 Assurances in Appendix C, relate to this Count.

18
19 8. ANALYSIS OF COUNT 5

20 1. All of the defendants together with divers
21 other persons

22 It has been our contention from the beginning
23 of this trial that this Tribunal has no competence to
24 investigate charges against other persons (or nations)
25 than those before them. The Charter specifically and

in spirit limits the scope of this inquiry into the
1 activities of "FAR EASTERN WAR CRIMINALS" and it is
2 to be understood that no Tribunal may arbitrarily en-
3 large upon the jurisdiction granted to it by law.
4 Since the Count of the Indictment limits the scope of
5 the inquiry into the activities of the defendants, it
6 must be evident to anyone charged with the duty of
7 determining the issues that this provision must be
8 strictly and narrowly construed.

9
10 That is meant by that evasive and, as Mr.
11 Keenan would say, "weasel" term "divers other persons"?
12 For our purpose we must ask the Tribunal to confine
13 it to at least persons who come under the term "Far
14 Eastern War Criminals." Since the group must of necessity
15 be of the phantom type, with neither name nor title,
16 can we be expected to speculate on their identity?
17 As has been suggested many times during this trial,
18 if we confine our inquiry to the doings of these accused
19 in the dock, we shall have a big enough problem. It
20 was a mistake in the first place to allow anyone but
21 the defendants to be considered in this case.

22 Since the prosecution mentions Germany,
23 Italy and Japan in Count 5, we must ask the Tribunal to
24 consider what nations are not intended under the head-
25 ing "Defendants or other divers persons."

1 It is to be understood that this Tribunal
2 would not attempt to review the guilt or innocence
3 of the leaders of Germany or the justice or injustice
4 of the failure to try the Italian leaders. It would
5 be most difficult for this Tribunal to make any findings
6 of fact on the question "to what extent did the leaders
7 of the two nations of Europe named participate in the
8 decision of Japan to go to war?"

9 Of necessity we must confine this hearing to
10 the deeds of the "defendants" and to restrict our in-
11 vestigation to their relationship to each other.

12 THE PRESIDENT: We will recess for fifteen
13 minutes.

14 (Whereupon, at 1445, a recess
15 was taken until 1500, after which the pro-
16 ceedings were resumed as follows:)
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MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. Cunningham.

3 MR. CUNNINGHAM: Page 70, No. 2:

4 Participated as leaders, organizers, insti-
5 gators or accomplices, etc.

6 In the preceding paragraph we suggested that
7 only the accused in the dock were contemplated by
8 Count V. That divers other persons could not be tried
9 here unless they were specifically named or designated.
10 We also point out that only individuals and not nations
11 were subject to the charge. The wording of the above
12 paragraph emphasizes these points and gives stress to
13 the further proposition that only individuals could be
14 leaders. The whole structure of the prosecution's case
15 is based upon individual responsibilities. However, in
16 this one count, of all of the fifty-five they claim
17 that the instrumentality or the means to carry out the
18 conspiracy is the state, not Japan alone but two other
19 states, over which they could never have had any con-
20 trol and with whom they were only carrying on normal
21 and strained diplomatic relations. It is inconceivable
22 that a group of nations could be presumptive enough
23 even to try the leaders of a defeated nation, but to
24 accuse three nations, as such; one of them a recent
25

1 ally or co-belligerent is giving too much scope to the
2 tern "Far Eastern War Criminals."

3 Surely there is no contention that this group
4 of accused had any power or influence over the politi-
5 cal acts or aims of Germany or Italy.

6 3. The object of the plan or conspiracy was
7 that Germany, Italy and Japan should secure the mili-
8 tary, "aval, political and economic domination of the
9 whole world.

10 There is no suggestion in the Charter or else-
11 where in the Indictment as to the authority for such
12 a charge as set out here. Although the prosecution
13 has spent much time and space in their attempt to
14 justify the charge that "Aggressive war is a crime,"
15 they have totally neglected the subject "Is world
16 domination"an offense recognized under any law?"

17 It is our understanding that the Charter
18 contemplates only four kinds of offenses. It reads,
19 "Planning, Preparation, Initiating or Waging of a
20 Declared or Undeclared War of Aggression, or in Viola-
21 tion of International Law, etc."

22 Since they recognize the offense of "Aggres-
23 sive war" as the object of the conspiracy and not
24 "domination of some area," we suggest that there is
25 no offense defined or named in the Charter which

1 corresponds to the charges made in Count V of the
2 Indictment.

3 Until specific authority can be pointed out
4 under the Charter or under some convention, treaty or
5 assurance that Domination of an area is considered
6 unlawful, we must say that Count V does not embrace
7 any offense under the Charter or under the general
8 rules of international law.

9 4. Each having special domination in its
10 own sphere.

11 It has never been considered criminal for a
12 nation or group of nations to seek domination of the
13 area in its own sphere. That is the principle of the
14 Monroe Doctrine, the balance of power in Europe and
15 spheres of influence as used in the most recent
16 agreements.

17 The writers on this subject have described
18 this activity of nations in various ways, for instance
19 Pitt Corbett says at page 104 of his Vol. 1, 5th
20 Edition, Section 56 as follows:

21 "Spheres of Influence.

22 (a) A sphere of influence, so far as it can
23 be said to possess a definite meaning, indicates a
24 region, generally inhabited by races of inferior civili-
25 zation, over which a State seeks, by compact with some

1 other State or States that might otherwise compete with
2 it, to secure to itself an exclusive right of making
3 future acquisitions of territory (b), and, generally,
4 also, the direction and control of the native inhabi-
5 tants. Such compacts are intended to guard against
6 future conflicts that might otherwise arise; and
7 are usually the result of a bargain under which some
8 special areas of interest are allotted as between the
9 respective parties to the arrangement. Britain and
10 France, with respect to certain parts of Africa, by
11 declaration and agreements made in 1890, 1891, and
12 1898 (c). (2) As between Great Britain and Portugal,
13 with respect to certain parts of the African contin-
14 ent, by agreements made in 1890, 1893, and 1896 (d).
15 (3) As between Great Britain and Italy, with respect
16 to certain parts of East Africa, by protocols of 1891
17 and 1894 (e). (4) As between Great Britain and the
18 Congo Free State, with respect to certain parts of
19 East and Central Africa, by an agreement of 1894 (f).
20 But such arrangements confer no territorial rights and
21 impose no responsibility on the State in whose favor
22 they are created, in relation to non-contracting
23 Powers; and although considerations of comity or fear
24 may induce the latter to respect such arrangements,
25 yet this is a matter of policy, and not of law. Nor

1 can such compacts, even if acquiesced in by other
2 States, give rise to any prescriptive right (g).

3 "Spheres of Interest.

4 "Somewhat different as regards their objects
5 are those agreements which allocate certain areas
6 already occupied by States more or less civilized as
7 spheres of influence or interest between Powers, hav-
8 ing already interests adjacent thereto; although the
9 line between these and the former is somewhat diffi-
10 cult to draw. Such arrangements, again, are merely
11 political, and involve no legal consequences other
12 than those arising out of the compact."

13 5. The sphere of Japan covering East Asia
14 and Indian Oceans and all countries and Islands therein
15 or bordering thereon and for that purpose should mutu-
16 ally assist one another to wage declared or undeclared
17 war or wars of aggression ** against any countries
18 which might oppose that purpose, etc.

19 Here we must determine whether the offense is
20 in "assisting" another nation in compliance with a
21 treaty, or without a treaty. It has never been con-
22 sidered criminal for one nation to assist another
23 nation which has been attacked. The crime alleged or
24 described in the charter is the planning, preparation,
25 initiation or waging of a war in violation of inter-

1 national law, not assisting others. Mutual assistance
2 pacts are most common in international relations.

3 When the prosecution says that the three
4 nations proposed to make war against anyone who might
5 oppose them, such an allegation is neither sufficiently
6 specific nor sufficiently proved to be considered here.

7 The judgment of the International Military
8 Tribunal in Nuernberg states regarding conspiracy:
9 "The prosecution says, in effect, that any significant
10 participation in the affairs of the Nazi Party or
11 Government is evidence of a participation in a con-
12 spiracy that is in itself criminal. Conspiracy is
13 not defined in the Charter. But in the opinion of
14 the Tribunal the conspiracy must be clearly outlined
15 in its criminal purpose. It must not be too far re-
16 moved from the time of decision and of action. The
17 planning, to be criminal, must not rest merely on the
18 declaration of a party program such as are found in
19 the 25 points of the Nazi Party announced in 1920 or
20 the political affirmation expressed in 'Mein Kampf' in
21 later years. The Tribunal must examine whether a
22 concrete plan to wage war existed and determine the
23 participants in that concrete plan" (Transcript page
24 16,332). What is the extent of the "concrete plan to
25 wage war" for the purpose of this trial?

1 VI. Next we shall examine concretely the
2 following acts of Japan charged as aggressions in the
3 light of the conspiracy charge of Count 5:

4 1) Manchurian Incident:

5 This incident occurred prior to the emergence
6 of the Nazi regime in Germany, and had nothing
7 to do with Germany or Italy. No evidence was tendered
8 by the prosecution to show the contrary.

9 2) China Incident:

10 The prosecution asserts that the Anti-Comin-
11 tern Pact was a preparation for the China Incident,
12 merely on the basis of the chronological order of
13 events that the Pact was concluded in 1936 and the
14 Incident broke out in 1937. No concrete evidence was
15 tendered to prove any connection of the two. On the
16 contrary, it was made clear that the Anti-Comintern
17 Pact (and the Secret Agreement) was for the only
18 purpose of defense against the menace of the
19 Comintern and the Soviet Union, which supported the
20 Comintern from behind with armed forces,¹ and that the
21 China Incident was not a result of planned actions, but
22 an accumulation of reprisals. There could have been no
23 conspiracy between Japan and Germany in view of the
24 proved fact that Germany was opposed to the China

2

Incident from the outset, did not agree to the withdrawal of military advisors and continued to sell arms to China.³

3) Pacific War:

It was claimed that the Tripartite Pact was one of the causes of the failure of the Japanese-American negotiations. However, at least at the time of the conclusion of the Tripartite Pact, no agreement existed between Japan and Germany to wage a war against America and England. Overwhelming evidence shows that both Japan and Germany wanted to avoid war with the United States.⁴ The judgment of Nuernberg states: "The Tripartite Pact between Germany, Italy and Japan had been signed on 27 September 1940 and from that date until the attack upon the USSR the defendant Ribbentrop with other defendants was endeavoring to induce Japan to attack British possessions in the Far East. This, it was thought, would hasten England's defeat, and also keep the United States out of the war" (pp 16,843-4). The attitude of Germany to the Japanese-American negotiations is another negative proof of a conspiracy between Japan and Germany. No evidence was tendered that Japan and Germany conferred prior to the outbreak

2. Ex. 486A, T. 5980-1
Ex. 598, T. 6601.
Ex. 549; T. 63246; Ex. 550, T. 6341-3;
Ex. 2762, T. 24,740

of the Pacific War. Ribbentrop was completely surprised by the Japanese attack on Pearl Harbor.¹ No witness who participated in the discussions prior to the Pacific War testified that Japan's decision to go to war was made also in consideration of Germany. The record of conversation of OSHIMA and Ribbentrop on 28 November 1941,² which was also referred to in the Nuernberg judgment, is an intercepted telegram, and OSHIMA testified that he has considerable doubt as to its accuracy.³ At any rate, even if we do admit that Germany tried to involve Japan in a war with the United States, it is evident that no concrete plan to support the charge of conspiracy existed. No such evidence was tendered by the prosecution.

The prosecution seems to give much weight to the records of conversations of MATSUOKA with the German leaders in supporting the charge of conspiracy. Even if the conversations had been as recorded by the German side (the question of German documents will be discussed later), they were conducted by MATSUOKA on his own responsibility and according to his personal views. The contents were never communicated to anybody,⁴ and never adopted as Japan's policy. It is

1. Ex. 2762, T. 24,742; Ex. 3524, T. 34,353-4

2. Ex. 603A, T. 6644-50

3. Ex. 3508, T. 34,030-1 4. Ex. 3508, T. 34,025

1 difficult to determine what was the real intention of
2 MATSUOKA, or whether he considered these conversations
3 important, as the interrogation or memoranda of MATSU-
4 OKA were rejected as evidence by this Tribunal. Under
5 the circumstances we contend strongly that it is very
6 unfair to use the records of MATSUOKA's conversations
7 against any other accused. Besides, MATSUOKA resigned
8 as Foreign Minister in July 1941, and completely re-
9 tired from political life. He had nothing directly to
10 do with the Pacific War, and was rather opposed to the
11 people who decided the war.

12 The prosecution produced no witness in the
13 Japan-German phase. This might have been because
14 they thought that they had sufficient evidence in
15 German documents, but perhaps they could not find a
16 single Japanese witness favorable to them. Therefore,
17 we must carefully examine the probative value of the
18 German documents as tendered to this Tribunal, on
19 which alone the prosecution is basing their charges.

20 The German documents were of course compiled
21 by the Germans alone. No Japanese has ever seen them;
22 they did not even know of their existence. This was
23 made clear by the testimony of witness Stahmer¹ and
24 other evidence.² It is in fact contrary to the general
25 principle of criminal procedure to use the record of

1 a conversation between A and B, against B when such
2 a record was compiled by A without knowledge of B
3 (although it could be used against A, in this case
4 against the Germans in Nuernberg). In order to use it
5 against B, the signature of B or any other evidence
6 of confirmation by B is necessary. It is especially
7 so in order to prove an agreement by the parties,
8 a most important factor of conspiracy.³

9 The German records of conversations were not
10 based on shorthand transcript, and were compiled often
11 by participants or attendants at the conversation
12 often after a considerable time. In some cases it is
13 not clear even when the records were made. At any
14 rate, the conversation was never recorded word by
15 word, and there is no assurance that opinions or
16 judgments of the recorder were not included, or that
17 his memory did not fail. Therefore, there is a great
18 doubt as to the accuracy of these records. They cer-
19 tainly cannot be taken as evidence of an agreement
20 between the parties.
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- 24 1. Ex. 2744, T. 24,409-10
25 2. Ex. 2748, T. 24,586-7
3. T. 6184

There are several different categories of

1 German documents, which will be discussed separately
2 below:

3 (1) The first group of documents was recorded
4 by an attendant of conversations, Dr. Schmidt. Affi-
5 davit of Schmidt is attached thereto. In view of the
6 fact that cross-examination of Schmidt was not allowed,
7 the defense has doubts as to their accuracy. But in
8 view of the ability of Schmidt, these documents can
9 be considered as comparatively accurate. This is,
10 of course, limited to the documents accompanied by
11 Schmidt's affidavit.
12

13 (2) Other documents are signed by persons who
14 were not actually participants in the conversations.
15 In this case it is not clear whether such a person was
16 present at the conversation or he merely recorded what
17 was dictated to him. Even if he was present at the
18 conversation, the accuracy of his record must be con-
19 sidered as much inferior to that of the first group.

20 (3) The majority of documents was apparently
21 written by the participants themselves or dictated. It
22 is inevitable that any record taken by the participant
23 of a conversation becomes mixed with his subjective
24 interpretations. Great possibility exists that his
25 wishful thinking is recorded as if it was an opinion

1 expressed by the other party. Especially in diplomatic
2 conversations it is more than customary that leading
3 questions are used. There is then the question of
4 language in case of Japanese. A "yes" spoken by the
5 Japanese means often only that he understood the
6 opinion of the other party, but it can easily be mis-
7 interpreted as if he agreed with that opinion. In
8 order to avoid such ambiguities, international agree-
9 ments always, even if they take the form of an "oral"
10 agreement, made in writing and must be confirmed by
11 both parties. A mere oral agreement is worthless in
12 the diplomatic world.

13 Besides, there was a special circumstance in
14 Germany to be considered. In Germany of dictatorship,
15 the position of an official was very unstable; his
16 promotion or future depended entirely upon the whim
17 of his superiors. If he was not agreeable to his
18 superior, he might even face the danger of dismissal.
19 This caused many unsound emulations among the officials,
20 seeking to please the superiors. They often acted
21 with the Nazi-like attitude "end justifies means."
22 This is briefly stated in OSHIMA's affidavit,¹ and
23 can also be seen from the affidavit of Ott.²

24
25
1. Ex. 3508, T. 33,982
2. Ex. 3503, T. 33,934.

1 (4) Other German documents are telegrams
2 exchanged between Tokyo and Berlin. Telegrams from
3 Berlin often convey the context of conversations, and
4 what was said under items 1-3 can be applied here.
5 Others are communications of the policy of the
6 German Government, but the nature of information
7 upon which the policy is based is often not clear.

8 Telegrams from Tokyo to Berlin are mostly
9 information telegrams dispatched by Ott. Ott himself
10 testified that they are not very accurate.³ The
11 sources of information are not made clear, and so
12 many interpretations, imaginations and conclusions of
13 Ott and his subordinates are included that they are
14 really worthless as data for concrete facts. Generally
15 speaking, embassies and legations in foreign countries
16 usually send information to their home governments as
17 they collect it without paying much attention to its
18 accuracy. The requirement of speed would not permit
19 them to check the value of information. Therefore, we
20 contend that it is not proper to use such telegrams as
21 evidence against one who did not participate in their
22 drafting.

24 7. Lack of Agreement.

25 It goes without saying that an agreement

3. Ex. 3303, T. 33,927-37

1 between the parties is an essential factor of a con-
2 spiracy. From the prosecution's lengthy summation,
3 trying to prove the conspiracy between Japan and
4 Germany, we can only pick up, as showing agreements
5 between the two countries, the Anti-Comintern Pact,
6 the Tri-Partite Pact, the Cultural Agreement, the
7 Non-Separate Peace Treaty and the Military Agreement.
8 There are no other agreements of any importance between
9 the parties.

10 The prosecution seems to give great weight
11 to the decision of the Four Minister's Conference
12 preceding the Tri-Partite Pact¹ as proving conspiracy.
13 However, this decision, like other decisions of the
14 Imperial or Liaison Conferences or the Cabinets is a
15 purely internal Japanese decision, and does not
16 constitute an agreement with Germany. Therefore, it
17 cannot at any rate be connected with the conspiracy
18 charged in Count 5. The same can be said regarding any
19 German policy which was not communicated to Japan.

21 MATSUOKA's conversation in Berlin can in no
22 way constitute an international agreement. Even if
23 MATSUOKA might have agreed personally to something
24 with German leaders, such agreements were nothing but
25 secret, private agreements, as seen from the records

1 of conversations. They cannot bind any other
2 Japanese or the Japanese Government.

3 The evidence tendered by the prosecution as
4 to some contacts between some Japanese and Germans
5 in November 1941² shows only that some Japanese
6 wanted to sound German attitude, or that some German
7 wanted to instigate Japan to an active policy. But
8 it is indeed a very remote assertion to contend that
9 they constituted international agreements to wage war
10 against western powers.

11 The prosecution thus failed, although they
12 tendered much in evidence directed toward the charge
13 of Count 5, to show any criminal agreements between
14 Japan and Germany which might have justified the
15 charge of conspiracy. Mere negotiations, conversa-
16 tions, soundings or encouragement by Germans can
17 certainly not be taken as agreements or conspiracy
18 between Japan and Germany. They also failed to prove
19 the criminality of any Japanese-German agreements,
20 except that they rely upon mere allegations.

21 The prosecution might contend in connection
22 with Count 5 that, apart from agreements between the
23 nations, Japanese individuals can be engaged in
24

25 1. Ex. 582, T. 6544-5

2. Ex. 601, T. 6638; Ex. 602, T. 6640; Ex. 603-A,
T. 6644-50.

1 criminal conspiracy with German individuals. But the
2 defense contends that in international politics an
3 individual without the backing or approval of his
4 government is powerless to make any agreement with
5 foreigners which might influence governmental policy.
6 Such an agreement, if any, can certainly be not con-
7 sidered as coming under Count 5. OSHILA is often cited
8 in German documents to have agreed with German views.
9 But we contend that the documents are totally worth-
10 less to prove any agreements, inasmuch as they were
11 not shown to and confirmed by OSHILA at any time.
12 Moreover, no concrete plan, which is essential to
13 conspiracy according to the Nuernberg judgment, has
14 ever been the subject of his alleged agreements.

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3. Lack of Continuity.

1 The prosecution further charges that Japan and
2 Germany continuously collaborated since the Anti-Comin-
3 tern Pact. This seems to be one of the essential points
4 of the prosecution. Admittedly, it is natural for any
5 country that its foreign policy maintains some continu-
6 ity, as it can never disregard actual circumstances. It
7 cannot change in a day or two. Such examples can be
8 found in the foreign policy of each and every great
9 power. It is correct from the retrospect that the tie
10 created by the Anti-Comintern Pact between Japan and
11 Germany influenced the Japanese foreign policy after-
12 wards. But the question is whether at the time of the
13 conclusion of the Anti-Comintern Pact the future of the
14 Japanese-German relations was foreseen and decided upon.
15 The answer to the question is a definite "no."
16

17 The Japanese-German relations were never, and
18 could have never been an independent factor in the
19 Japanese foreign policy; they were always a part of it.
20 Therefore, unless all of the features of the Japanese
21 foreign policy are made clear, a true evaluation of the
22 Japanese policy towards Germany cannot be undertaken.
23 Diplomacy towards various countries is always inter-
24 woven with one another, and the policy of great powers
25 with which Japan had important relations, for instance

1 the United States, Great Britain, Russian, China, etc.,
2 was constantly affecting and influencing Japan's policy
3 towards Germany. These points could not be made clear
4 in this trial.

5 The prosecution's description of the Japanese-
6 German relations is, even if true, necessarily very much
7 one-sided. It is in some respects very misleading, too,
8 inasmuch as it exaggerates insignificant details out
9 of all proportion to the whole picture. In this connec-
10 tion, the following facts are pointed out:

11 1) The Anti-Comintern Pact was indeed a very
12 weak tie connecting Japan and Germany. It was rather
13 a spiritual and ideological combination against Communism.
14 The door was not closed to collaboration with any other
15 countries, which were invited to join the Pact.¹

16 2) In spite of the Anti-Comintern Pact, Germany²
17 was opposed to the Japanese policy in the China Incident.

18 3) The negotiations for the strengthening of
19 the Anti-Comintern Pact were ended by the conclusion of
20 the German-Russian Non-Aggression Treaty. Japan protested
21 vigorously, and the Anti-Comintern Pact was made a dead
22 letter.³ The Cabinets of ABE and YONAI pursued a foreign
23

24 (1. Ex. 36, T. 5934-6

25 2. Ex. 486A, T. 5980-1; Ex. 594, T. 6601;

Ex. 595, T. 6604-20

3. Ex. 486L, T. 6122-3; Ex. 2727, T. 24196)

policy friendly to the United States and Great Britain.

1 4) Germany never communicated to Japan her
2 intention to attack Poland. She was not bound to do so.

3 5) At the time of the conclusion of the Tri-
4 partite Pact, Germany declared that she would not re-
5 quest Japan's participation in the European War.¹

6 6) Germany was opposed to the Japanese-
7 Russian Neutrality Pact.² Japan was opposed to the
8 German-Russian War.³

9 7) Germany urged Japan to attack Singapore.
10 Japan refused.⁴

11 8) Germany urged Japan to attack Soviet
12 Russia. Japan refused.⁵

13 9) Germany wanted to keep the United States
14 out of the war. Japan attacked the United States with-
15 out any previous consultation with Germany.⁶

16 10) During the war there was no cooperation
17 between the two countries.⁷

18 ITALY

19 Although Count V mentions something about Italy
20 as a member of the Axis group her participation is
21

- 22 (1. Ex. 549, T. 6323-4
23 2. Ex. 2735-A, T. 24303; Ex. 580, T. 6528-9
24 3. Ex. 2735A, T. 24303-4
25 4. Ex. 570, T. 6457; Ex. 571, T. 6459-67
Ex. 572, T. 6468; Ex. 579, T. 6521
5. Ex. 812A, T. 8014; Ex. 3822A, T. 37961-3
6. Ex. 2762, T. 24742; Ex. 3524, T. 34353-4
7. Ex. 3765A, T. 24754-5)

1 considered as negative. Without presenting any evidence
2 on the subject we assume that the Tribunal is well aware
3 of the fact that Italy acted not in concert but in
4 contravention of the understanding which she had with
5 Germany, for defensive agreements. There never was any
6 agreement with Japan in which her assistance was sought
7 or expected. Italy all through the European war and
8 for months before was a most impotent ally. She was
9 a constant drain upon the war potential of Germany and
10 diplomatically she was not an asset, but always a
11 liability. Even the Allies admit this.

12 In lieu of evidence on this subject we rely
13 upon the statement of General Marshall, being one of
14 the highest and most reliable military authorities of
15 the times and a world statesman. His statement bears
16 repetition:

17 "When Italy entered the war Mussolini's
18 strategic aims contemplated the expansion of his empire
19 under the cloak of Germany military success. Field
20 Marshal Keitel reveals that Italy's declaration of war
21 was contrary to her agreement with Germany. Both Keitel
22 and Jodl agree that it was undesired. From the very
23 beginning Italy was a burden on the German war potential.
24 Dependent upon Germany and German-occupied territories
25 for oil and coal Italy was a constant source of economic

attrition. Mussolini's unilateral action in attack-
1 ing Greece and Egypt forced the Germans into the Balkan
2 and African campaigns, resulting in over-extension of
3 the German armies which subsequently became one of the
4 principal factors in Germany's defeat." (Exhibit 2765A,
5 p. 24754)
6

7 THE PRESIDENT: Is that in evidence? If it
8 isn't you shouldn't read it. You have an exhibit
9 quoted but it has an "A" after it. It may be in
10 evidence. You say "in lieu of evidence" you quote
General Marshall.

12 MR. CUNNINGHAM: Well, I must admit I am not
quite sure. As I was reading it I was reflecting. The
document is in evidence but I am not quite sure that
14 this statement is in evidence.

16 THE PRESIDENT: Oh, that wouldn't matter. If
17 it is in evidence it can be read. Proceed, Mr.
18 Cunningham.

19 These following facts are worthy of judicial
20 notice:

- 21 1. Italy refused to join the war against
22 Poland, but Russia did join Germany in this campaign.
23
- 24 2. Italy invaded Greece without the approval
25 and contrary to the wishes of Germany (Ex. 2765A,
p. 24,754).

1 3. Italy joined the war against France with-
2 out the consent or approval and contrary to the wishes
3 of Germany.

4 4. Italy, as a nation became the enemy of
5 Germany at a crucial time in the war.

6 5. Italy surrendered in early 1943, contrary
7 to her agreement with Germany.

8 GERMAN-RUSSIAN-JAPANESE RELATIONS.

9 The final argument of the prosecution con-
10 cerning the relations of Russia to Germany, Japan and
11 Italy did not come in sufficient time to be included
12 in the general summation on German-Japanese relations.
13 Only a brief answer will be undertaken here, as it
14 relates to Count V.

15 It is impossible to properly view the foreign
16 policy of Japan during the days between 1935 and 1941
17 without taking into consideration what was happening
18 to affect the foreign policy of the nations of Europe
19 and Asia. Russia had as much to do with the change in
20 policy of Japan towards Germany as did any other power.
21 It was the action of the Comintern in the first place
22 in 1935 which provoked the Anti-Comintern Pact. It
23 was Russian action in Asia and Europe which aroused
24 both Germany and Japan to negotiate for the development
25 (1. H. 1-168., Del'd February 11, 1948)

1 of closer relations.¹ It was Soviet Russia's appose-
2 ment of Hitler in 1939 and her abandonment of England
3 and France which enabled Hitler to conquer Western
4 Europe. The Tripartite Pact was concluded, contrary
5 to the allegation of the Russian prosecution, with the
6 improvement of relations with Soviet Russia as one of
7 the principal aims.²

8 In reading the arguments on the effect of the
9 Anti-Comintern Pact, the effect of the negotiations
10 for the strengthening of the Pact and the consideration
11 of the events leading up to the conclusion of the Tri-
12 partite Pact one might get the impression that Soviet
13 Russia was contending that these diplomatic moves
14 were made with a view to antagonizing Soviet Russia.³

15 After reading all of the documents introduced
16 in the German-Japanese, Russian-Japanese and German-
17 Russian phases of the case an impartial observer could
18 not help but get the impression that Japan was doing
19 all within her power to settle all of her differences
20 with Soviet Russia on a friendly and diplomatic basis.⁴
21 There is proof that she succeeded in her dealings with
22 Russia but failed with the other Western Powers.

23 (1. Ex. 3508, T. 33970

24 2. Stehmer, Ex. 2475, T. 24382

25 3. H. 125, H 104

4. Ex. 2762, T. 23146)

1 In digesting the documents which deal with
2 the German-Russian relations, the Non-Aggression Pact
3 and the Protocol which provided for consultations
4 between Germany and Russia, one would get the impres-
5 sion that Soviet Russia was doing all within her power¹
6 to appease and remain friendly with Nazi Germany.
7 History has told us emphatically that such a relation-
8 ship was impossible between the two powers with such
9 divergent views.²

10 Upon reading the Tripartite Pact anyone would
11 readily understand that both Japan and Germany were
12 desirous of maintaining their friendly relations with
13 Russia, which were cordial at the time between Germany
14 and Russia and later between Japan and Russia.³ It is
15 difficult to read the documents and attribute to them
16 the motives and results which their words or objects
17 do not express, and which are claimed by the prosecution.
18 We cannot review the evidence which established these
19 views but they are presented in other phases of the case,
20 both general and individual.
21

22 It has been admitted all through this trial
23 that Germany did everything within her power to get

24 (1. Ex. 2744, T. 24392
25 2. Ex. 2475, T. 24382
 3. Ex. 43, T. 513. KONOYE explanation §. 24301)

1 Japan to join the war against Russia. This Japan re-
2 fused to do.¹

3 We understand, from the record, that the
4 German leaders did not consider Japan's attitude as
5 cooperative. The record is also clear that Japan did
6 not wish Germany to go to war against Soviet Union and
7 counselled her against it. Germany did not consider Japan
8 obligated in any way to assist her in the war against
9 Russia. There was no obligation on the part of Japan
10 to join. Japan had through her diplomatic relations
11 prevented Germany from creating a situation which would
12 bring Japan into conflict with the Soviet Union.² By
13 entering into the Neutrality Pact with Russia in 1941
14 Japan announced to the world that she wanted to remain
15 friends with Russia. It was quite apparent at that
16 time that friendly relations between Germany and Russia
17 could not be expected for long. This diplomatic move
18 by Japan negatives any plan of cooperation between
19 Germany and Japan vis-a-vis Soviet Russia. These are
20 the major topics discussed in the Russian Summation.
21 The details of the border incidents, the mediation
22 talks and the other political maneuvers which involved
23 Japan and Russia and Germany are covered elsewhere.
24

25 (1. Ex. 2462, T. 23146
2. Art. 5, Ex. 43.)

1 The Russian claims of Japanese aggression against her
2 cannot be taken too seriously. The relations of Russia
3 with Germany are not in issue here. The proof, the facts
4 and history contradicts the Russian story so completely
5 that this brief reference to their claims should be
6 limited to the weight which they attach to the state-
7 ments of Ott and Stahmer, and Pedersdorff. Let us
8 analyze for a moment the reference "the telegrams
9 of the well informed German ambassador in Tokyo, Ott"¹
10 and compare it to the facts.

11 With the exception of one witness the case of
12 the prosecution in this phase was based upon one-sided
13 self-serving documents produced from the German files,
14 expressing more a hope or prayer than the true state
15 of facts. Most of the documentary evidence originating
16 in Japan came from the German Ambassador Eugen Ott.
17 According to his own story the documents affecting the
18 accused in the dock were exaggerations, product of his
19 own imagination and not based upon facts, but manu-
20 factured to promote his own selfish interests further.
21 Proof was offered but refused, which was designed to
22 corroborate what Ambassador SHIRATORI states in his
23 testimony.² Before the Tribunal attempts to place any

24
25 (1. H-156. Page H-125.
2. DF. 3087, DL3086)

value on the documents of which Eugen Ott was the
1 author we invite their serious attention to this
2 statement, "Much of Ambassador Ott's information, such
3 as it was and false as it was, I am informed came from
4 the confidential secretary of Prince KONOYE, one OZAKI,
5 Hidemi who was later tried and executed. OZAKI was a
6 communist and associate of Sorge (Def. Doc. 2878,
7 Ex. 3595, record page 35053), a German by birth, but,
8 as I am further informed, a Russian spy who had worked
9 his way as a newspaperman into the confidence of
10 General Ott."

11 If the prosecution had wanted the facts they
12 should have produced Ott for cross-examination. While
13 Ambassador Ott was resting in Peking, China, the Chinese
14 Government reported:

15 "The Mission wishes to inform the Diplomatic
16 Section that the above-mentioned enclosures were sub-
17 mitted to the Ministry of Foreign Affairs as requested
18 and that the Mission has just received a reply from
19 the latter stating that the said Eugen Ott was sent
20 to Peiping by the GHQ in April 1946 and was brought
21 back to Tokyo from Shanghai in May 1946, not being
22 heard of in China since that time.

23 The said enclosures are herewith returned."

24 Ambassador Ott was questioned in Shanghai the
25 day before he was sent back to Germany.

The Tribunal is invited to discount the value
1 of the documents issued by Ott. We brand him as gullible
2 and since in the language of the President "that man
3 said a lot," it would be quite unjust to give it any
4 weight.

5 Since it is quite difficult to cross-examine
6 a document, we considered it in the best interests of
7 justice and the discovery of facts that Ott be here
8 for our cross-examination. Since it is rather difficult
9 to discredit one's own witness we were seriously handi-
10 capped in bringing the truth to the Tribunal. This was
11 the duty of the prosecution. They chose to offer only
12 the few distorted documents from a volume 6,000 which
13 alone could give the whole picture. From the standpoint
14 of the personal interest of Ambassador Ott in promoting
15 himself, from his uncertain position in the confidence
16 of his superiors, keeping in mind the source of his
17 information and the refusal of the Tribunal to entertain
18 the opinion of Ambassadors generally, especially Grew,
19 Craigie and NOMURA, KURUSU and others, it is incon-
20 ceivable that much importance will be placed upon the
21 utterings of an indiscreet impotent diplomat.

23

24

25

CONCLUSION

1
2 1. It should be noted that the prosecution
3 has seen fit to infiltrate its argument on the German-
4 Japanese relations into each section of its summation
5 and throughout their whole case against the individual
6 accused. It would be an understatement to say that
7 there was repetition. It has been impossible for us
8 to read the whole of the some nineteen hundred pages
9 and answer each document and to properly interpret
10 the testimony of all of their witnesses as well as
11 our own. We must rely upon the Members of the Tribunal
12 to take both arguments by the four corners and overlook
13 the omissions.

14 2. If the Tribunal at some future time wishes
15 to review our claims as they relate to the German-
16 Japanese-Italian relations, this conclusion should
17 serve such a purpose. We have shown conclusively that
18 the scope of this inquiry has gone far beyond the author-
19 ity granted by the Charter.
20

21 Although we appreciate very much all of the
22 kind assistance given to us by the Tribunal and the
23 staff of SCAP, we assert that it was impossible to make
24 a full investigation of the facts which were brought
25 into issue under the wide sweeping charges made in
the Indictment, especially under Count V. (P.3)

1 As in the other phases of the defense case
2 we contend that the Potsdam agreement was extended
3 arbitrarily to embody offenses not included in the
4 term "War Crimes." (P.8)

5 3. The claim that the three nations of
6 Japan, Germany and Italy formed a conspiracy is prepos-
7 terous. (P.14) That the three nations conducted their
8 relations through the ordinary channels of diplomacy is
9 clearly shown and the manner in which the sovereign
10 rights of nations are exercised is not a matter of
11 judicial review, but a political question beyond the
12 competency of courts of any land. (P.15)

13 4. The Anti-Comintern Pact and the protocol
14 were weak, defensive agreements clearly within the
15 sovereign right of the nations to negotiate and exe-
16 cute, without interference or censure from other nations.
17 (PP. 16-17-18)

18 That the meaning of the pact is clear from
19 its context, not ambiguous and subject to the ordinary
20 rule of law as to the interpretation of international
21 treaties. (P. 19)

22 The treaty relationships between Japan and
23 Germany were approved in the usual parliamentary man-
24 ner, authorized by the constitution and approved by
25 the Privy Council. They were diplomatic agreements

of a political nature, not reviewable by any tribunal then in existence or authorized to be created. (PP.25-29)

1
2 4. Germany approached Japan for closer rela-
3 tions in 1938-1939 after the Anti-Comintern Pact had
4 been extended to other nations. The negotiations
5 failed due to the difference of opinion of the two
6 governments on the "War participation" clauses. The
7 negotiations were considered by seventy cabinet meet-
8 ings, which negatives any idea of totalitarian decision
9 or dictator rule in Japan. What Japan and Germany
10 failed to agree upon in two years, Ribbentrop and
11 Stalin agreed upon in a few hours, August 23, 1939.
12 (PP. 29-31)
13

14 5. When Germany and Russia entered into
15 their Non-Aggression Pact ^{2.} in August 23, 1939, this
16 caused great shock in Japan, destroyed the Anti-Comintern
17 Pact, violated the secret protocol and reopened Japan-
18 ese-American relations, changed the government in Japan
19 and permitted Hitler to have a free rein to overrun
20 Europe., Ambassador OSHIMA resigned because he had
21 failed in his mission to keep his country informed on
22 the relations of Germany to Russia. Japanese-German
23 (2. If aggressive war is a crime, why do nations enter
24 into non-aggression pacts, don't they believe it
25 either? It isn't necessary to make a contract not
to break a law. The very term non-aggression pact
negatives the existence of a law against aggression.)

1 relations remained cool for a year. ARITA considers
2 closer ties with Germany. YONAI Cabinet fell under
3 American pressure (PP. 34-40)

4 6. When the second KONOYE Cabinet was organ-
5 ized and MATSUOKA became Foreign Minister, feelers were
6 sent to Germany through Ambassador KURUSU who suc-
7 ceeded Ambassador OSHIMA in Berlin. As a result Envoy
8 Stahmer was dispatched to Tokyo to determine the true
9 situation. The picture was confused. In the meantime
10 the Four Ministers' Conference was held and a program
11 adopted upon which the negotiations for the Tripartite
12 Pact were concluded. Within twenty days an agreement
13 was reached and the Tripartite Pact became the Japan-
14 ese policy upon the issuance of the Imperial Rescript.
15 The same kind of a document which announced the new
16 constitution of Japan. This bound all of the people of
17 Japan and was published to the world. The negotiations
18 were kept secret. Only MATSUOKA participated from the
19 Japanese side. Stahmer and Ott from the German side.
20 The objects of the pact were clearly expressed in Eng-
21 lish, and its terms are clear, concise, and brief. The
22 power to enter into the agreement rested with the three
23 nations concerned. The world could readily understand
24 the purpose of the pact -- to keep the United States
25 out of the war in Europe -- to help Japan and Russia

1 maintain friendly relations with each other and with
2 Germany. The pact lost its effect when Germany went
3 to war against Russia and when Japan and America en-
4 tered the Pacific War. (PP. 40-48)

5 7. After the Tripartite Pact was concluded
6 the first test came when the Singapore question arose.
7 Japan refused diplomatically to enter the war against
8 Britain. Ribbentrop used all of the cunning, pressure
9 and propaganda at his disposal to induce Japan to
10 enter the war against Britain at the darkest hour of
11 the war. Japan refused. At the outbreak of the German-
12 Russian war, and for many months thereafter, the Ger-
13 mans used every diplomatic trick they knew to involve
14 Japan in their war with Russia, but Japan made a neu-
15 trality pact which she stuck to. Japan went to war
16 with America and Britain, much to the surprise of the
17 Germans. This was an independent action, as was the
18 action which Germany took against Russia. The non-
19 separate pact was a diplomatic measure which proved to
20 be ineffective. The mixed commissions were propagandis-
21 tic but not helpful. (PP. 48-65)

22 8. In our Analysis of Count V we have empha-
23 sized that this inquiry should be restricted to the
24 acts of individuals as prescribed by the Charter and not
25 to nations as mentioned in Count V. It is quite

1 inconceivable that the framers of the Charter intended
2 to make "World Domination" or division of the world
3 into spheres of influence, a crime or offense against
4 humanity. The conspiracy and the substantive offenses
5 are set out in the Charter and should be the guide
6 for the maximum interpretation of acts which come within
7 the classification of "Crimes against Peace." Although
8 no evidence has been introduced in this trial which
9 portrays the part which Italy played, we have shown
10 that she was so impotent and unreliable that the Court
11 should take notice of her status as an ally of the
12 Allies and not as a member of the Axis. (PP. 67-82)

13 9. Germany's relation to Russia was found to
14 be irrelevant in this trial. It is impossible to re-
15 view the relations of Japan and Germany to each other
16 without investigating the diplomatic relation between
17 Russia and Germany. We assume that the Tribunal by
18 this decision has determined that this inquiry does not
19 extend to Japan's relations to the European nations
20 but only to those nations named in the list of com-
21 plaining nations, and then only as respects their Far
22 Eastern possessions.
23

24 Japan devoted her foreign policy in great
25 part to appeasement of Soviet Russia and succeeded
until the last days of the war when she was attacked,

1 contrary to the Neutrality Pact. Soviet Russia tried
2 to appease Nazi Germany, but the two opposite systems
3 of government could not do business with each other for
4 long. The evidence upon which Russia relies to show
5 Japan's attitude toward Soviet Russia is not worthy of
6 credit, especially the documents of Ott and the testi-
7 mony of Prisoner-of-War von Petersdorff. The Tribunal
8 is invited to discount the value of their statements
9 and take the voluntary, unbiased and authoritative
10 statement of Ambassador Stahmer who spoke from first-
11 hand information. (PP. 82 A-h)

12 10. Although the issues of fact are relative-
13 ly simple in this phase of the case, the issues of law
14 involved are complex. If this Tribunal follows estab-
15 lished principles of law that "ambassadors are not
16 responsible for the ordinary consequences of their acts,
17 performed in a foreign country" and that acts of state,
18 either through their ministers of state and agents
19 abroad are not subject to judicial review, then the
20 legal issues will be simple of solution. Sovereignty
21 is the keyword in international relations. Political
22 decisions are of the sovereign -- are not reviewable
23 by the judiciary.

24 12. In the argument on the issues raised by
25 Count V we assert that the right to make treaties of

alliance is an inalienable right of a sovereign nation.

1 That violations of treaties are not crimes for which
2 individuals are responsible to third powers. We sug-
3 gest further that there is no connection under the
4 Charter between Far Eastern War Criminals and European
5 Axis War Criminals. We call attention of the Tribunal
6 to the fact that the prosecution is asking a judgment
7 on diplomatic correspondence. Unless all of the docu-
8 ments are available and offered, no true picture can be
9 determined. This Tribunal would not be justified in
10 returning a judgment based upon the facts it has before
11 it on the issues raised in Count V. The history of
12 Japanese policy during the period of the Indictment
13 shows seventeen foreign ministers. This should dispel
14 any illusion of continuity of foreign policy. (PP.90-111)

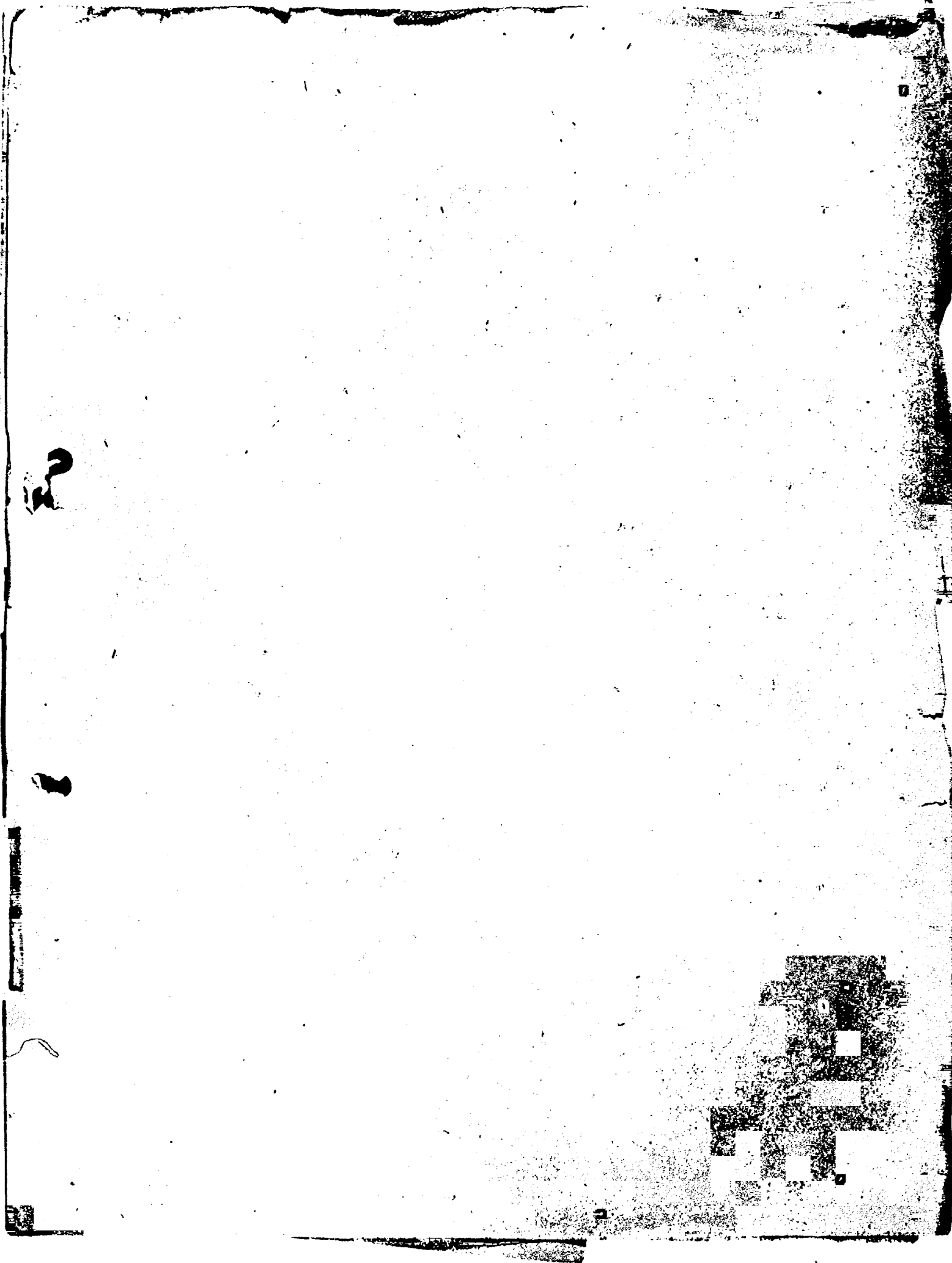
15
16 Going down now to --

17 THE PRESIDENT: Leave that until morning,
18 Mr. Cunningham.

19 We will recess until half past nine tomorrow
20 morning.

21 (Whereupon, at 1600, an adjournment
22 was taken until Wednesday, 10 March 1948, at
23 0930.)
24

25 - - - -



10 MARCH 1948

I N D E X

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Wednesday, 10 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART McDOUGALL,
Member from the Dominion of Canada, not sitting from
0930 to 1200.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are
5 represented by counsel. The Sugamo prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 With the Tribunal's permission, the accused
10 KAYA will be absent from the courtroom for the entire
11 day conferring with his counsel.

12 Mr. Cunningham.

13 MR. CUNNINGHAM: Continuing at line 8, page 123:

14 We believe we have won the issue on the import-
15 ant points of fact raised by Count 5. We have found no
16 legal authority in support of the prosecution's theory
17 of the law as relates to the issues involved in Count 5
18 of the Indictment. Based upon the record we ask the
19 Tribunal to make the following findings of fact and law:

20 1. That this inquiry is limited to the acts of
21 the accused only, as individuals.

22 2. That Count 5 does not embrace an offense as
23 defined by the Charter.

24 3. That Count 5 does not embrace an offense as
25 defined by existing international law.

4. That states such as Germany, Italy, and
1 Japan cannot be charged with crimes, only individuals
2 are contemplated by the Charter.

3 5. That the Anti-Comintern Pact was not in
4 violation of international law and was a lawful exer-
5 cise of the sovereign right of Japan and Germany.

6 6. That the negotiations for the strengthening
7 of the Anti-Comintern Pact were also legitimate exer-
8 cises of the sovereign right of nations to make defensive
9 agreements with other nations. The negotiations failed.
10

11 7. That the Tripartite Pact was a defensive
12 agreement between three nations, and became a part of
13 the foreign policy of Japan, binding on all of its sub-
14 jects. That the Pact was also a lawful exercise of the
15 sovereign right of the signatory nations.

16 8. That the cultural agreement between the
17 nations and the economic negotiations were also
18 legitimate acts, not subject to judicial inquiry.

19 9. That all of the agreements between Japan,
20 Germany, and Italy mean just what they say and are not
21 ambiguous. That they do not need explanation or clari-
22 fication.

23 10. That all of the German-Japanese negoti-
24 ations were conducted at the instance of and in behalf
25 of the Japanese Government, under its instructions or

later ratified in accordance with diplomatic procedure.

1 11. THAT THERE WAS NO CO-OPERATION BETWEEN
2 GERMANY, JAPAN, AND ITALY.

3 a. That Germany wanted help from Japan. Japan
4 gave none when Germany needed it.

5 b. That Germany wanted assistance from Japan
6 in her battle with Britain; Japan declined to assist.

7 c. That Germany asked Japan to fight Russia;
8 Japan did the opposite and made a neutrality pact.

9 d. That Germany wanted America kept out of
10 the war; Japan attacked at Pearl Harbor.

11 e. That Germany wanted consultation; Japan
12 kept her plans and negotiations secret.

13 f. That Japan wanted No-Separate peace;
14 Germany surrendered. Italy joined the Allies. There
15 was no co-operation.
16

17 12. That Italy was a liability to both Japan
18 and Germany. (PP. 80-83.)

19 13. That the foreign policy of one nation or
20 group of nations is not subject to judicial inquiry by
21 other nations. It is a political matter and not one for
22 judicial determination.

23 14. That the record does not and could not dis-
24 close sufficient facts upon which to base a judgment on
25 Count 5. The issue is confined to the relations of these

1 accused with each other and to their government. This
2 Tribunal had no authority to inquire into the effect of
3 the acts of these accused beyond the Far East.

4 On these points we submit our case covering
5 the issues raised by Count 5. The question whether or
6 not there was any co-operation or collaboration between
7 the three nations, Japan, Germany, and Italy, to dominate
8 the world is not in issue here. Whether they joined to-
9 gether to accomplish war aims must be answered in the
10 negative, it is best answered in the words of General
11 Marshall, "Nor is there evidence of close strategic
12 co-ordination between Germany and Japan."

13 Mr. Logan will continue.

14 THE PRESIDENT: Mr. Logan.

15 MR. LOGAN: If the Tribunal please, this topic
16 is, "Japan was Provoked into a War of Self-Defense."

17 1. Thirteen years ago to the day before the
18 Japanese attack on Pearl Harbor announcing the commence-
19 ment of open hostilities in the Pacific, a group of
20 distinguished American statesmen were assembled in the
21 Capitol Building at Washington, D. C. Their purpose was
22 to discuss the advisability of the United States ratifi-
23 cation of the now famous Kellogg-Briand Peace Pact. In
24 the group was none other than the co-author of that
25 document himself, then Secretary of State, the Honorable

1 Frank B. Kellogg.

2 2. In the course of the recorded discussions
3 that took place Secretary Kellogg was asked this ques-
4 tion: "Suppose a country is not attacked -- suppose
5 there is an economic blockade * * *?" Secretary
6 Kellogg replied: "There is no such thing as a blockade
7 without you are in war." A Senator then said, "It is
8 an act of war," and Secretary Kellogg concurred saying,
9 "An act of war absolutely * * *."

10 3. During the same conference Secretary
11 Kellogg also stated to the body of Senators: "As I
12 have explained before, nobody on earth, probably,
13 could write an article defining 'self-defense' or
14 'aggressor' that some country could not get around;
15 and I made up my mind that the only safe thing for any
16 country to do was to judge for itself within its
17 sovereign rights whether it was unjustly attacked and
18 had a right to defend itself and it must answer to the
19 opinion of the world."^{a.}

20 4. The foregoing is not set forth for the
21 purpose of criticizing American statesmen or govern-
22 mental leaders but only to show that it is the solid
23 thought existing in the United States, at least, that
24 to interfere with a country's economic stability is a
25 (3. a. 70th Congress, Hearing of Committee on Foreign
Relations, Friday, Dec. 7, 1928.)

dire and drastic movement.

1 5. To indicate to this Tribunal that none
2 other than the co-author of the Pact of Paris regarded
3 such economic interference as an act of war absolutely
4 we have quoted from the language used by Secretary
5 Kellogg to reveal with conciseness and clarity that this
6 great and learned American admitted with extreme frank-
7 ness that it was the inherent right of a country to
8 judge whether it had a right to defend itself or not
9 based upon the factual situation confronting it.
10

11 6. The following remarks are designed to
12 assist the Tribunal in arriving at the true and real
13 picture existing in the Pacific area in the darkened
14 period before the advent of war, December 8, 1941. We
15 might well pose these questions: Did Japan instigate
16 and wage a war of aggression against the Western Powers
17 which was the result of premeditated planning, the
18 utterance of evilly prepared plans whose sole object was
19 directed at conquering and dominating the great powers
20 upon which it had depended with almost childlike faith
21 for its economic sustenance? Or, did Japan attempt to
22 exercise its internationally recognized sovereign right
23 of self-defense against encroachments by foreign powers
24 which threatened its very existence -- a decision which
25 no authority questions as being their prerogative?

1 7. The instruments of war are wide and varied.
2 The evolution of man with his advancement in science
3 with the ever increasing interdependence of nations
4 upon each other for their sustenance introduces into the
5 realm of warfare more than the explosion of gun powder
6 and the resultant killing of the enemy but other and
7 equally formidable methods of reducing the resistance of
8 an opposing nation and curbing it to the will of another.
9 Today we hear the shout round the world that economic
10 medicine is needed to forestall the disease of another
11 great world conflict. To deprive a nation of those
12 necessary commodities which enables its citizens and
13 subjects to exist is surely a method of warfare not
14 dissimilar to the violent taking of lives through ex-
15 plosives and force because it reduces opposition by
16 delayed action resulting in defeat just as surely as
17 through other means of conventional hostilities. It can
18 even be said to be of a more drastic nature than the
19 blasting of life by physical force for it aims at the
20 slow depletion of the morale and well-being of the
21 entire civilian population through the medium of slow
22 starvation.
23

24 8. The prosecution would have this learned
25 Tribunal believe that the Allies perpetrated economic
blockades against Japan which were aimed only at the

1 dimunition of military supplies but the evidence is that
2 the blockade affected all types of civilian goods and
3 trade, even food, as will be shown.

4 9. This was more than the old fashioned en-
5 circlement of a nation by ships of overwhelming superior-
6 ity and refusing to allow commerce to enter or leave. It
7 was the act of all powerful and greatly superior economic
8 states against a confessedly dependent island nation
9 whose existence and economics were predicated upon
10 world commercial relations.

11 10. The prosecution theory that the action of
12 the United States as taken was justifiable as a means
13 of curbing alleged Japanese aggression in China is
14 answered by the Japanese with its solid announcement that
15 the Western Powers refused to understand the true situ-
16 ation existing in the Orient. To argue whether or not
17 one nation was right or wrong in its contention is im-
18 material and unnecessary. The true value of the evidence
19 is to show only that there was a legitimate issue exist-
20 ing between Japan and the Western Powers -- a problem
21 which could give rise, whether through nationalistic
22 thinking or not, to the conclusion that Japan was being
23 threatened. If there was then a legitimate basis for
24 such a concept on the part of the government leaders of
25 this defeated power the element of aggression is

1 dissipated in the wake of solid international utterances
2 of all powers that a nation has the right to decide for
3 itself when it is placed in jeopardy. With this thought
4 in mind we proceed to point out for the benefit of the
5 Tribunal Allied economic action against Japan. And we
6 will not rest our case alone with the showing of fact on
7 this subject matter but shall go further and reveal the
8 military concerted action that was likewise taken.

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1 11. Though Japan did not so elect, it had
2 a right to determine that the economic blockade amounted
3 to an act of war against it. Nevertheless with
4 characteristic patience it tried to settle the differences
5 amicably but the increased economic blockade coupled
6 with the military encirclement threat finally convinced
7 Japan that as a last resort she had to go to war for
8 her own self preservation and self defense. It is to
9 the eternal credit of Japan that she did not immediately
10 interpret these economic acts of the Allied nations
11 as tantamount to a declaration of war but perseveringly
12 pursued the path of attempted peace through negotiations.
13 Moreover it must be borne in mind that during this
14 period the Allied Nations were not militarily asleep or
15 inactive but to the contrary were pursuing a path which
16 could hardly be accepted as lawful acts of a neutral
17 country. These acts were recognized by Japan as
18 definitely hostile and she reacted to them. It should
19 forever be borne in mind that Japan was not interfering
20 with events in the Western Hemisphere and particularly
21 things American but had concerned itself for many
22 years with the problems of the Orient. It was the Western
23 Powers who had forced their intervention into the
24 other side of the globe.
25

12. The prosecution in its opening statement

1 in discussing what is an aggressive war set forth a
2 definition of aggression as "a first or unprovoked
3 attack or act of hostility; the first act of injury
4 or first act leading to a war or a controversy; an
5 assault; also, the practice of attack or encroachment;
6 as a war of aggression.

7 13. "A nation that refuses to arbitrate or
8 to accept an arbitration award, or any other peaceful
9 method, in the settlement of dispute but threatens to
10 use force or to resort to war."

11 14. The facts adduced in this trial definitely
12 establish that within the prosecution's own definition
13 the Pacific War was not a war of aggression by Japan.
14 It was a war of self defense and self preservation,
15 resulting from unjustified provocation.

16 JAPAN'S ECONOMY WAS NOT PLANNED OR DEVELOPED
17 FOR WAR

18 15. Before arriving at a decision in this
19 case, we suggest consideration be given to the fact
20 that for many centuries Japan had been a peace loving
21 nation. The Japanese people had been content with their
22 own civilization, their ages of high culture and their
23 reverence for the virtues and traditions handed down
24 from time immemorial. They were satisfied to such an
25 extent that they had closed their ports, shut themselves

1 away from outsiders and blissfully enjoyed the frugality
2 from the resources of their own islands. Their troubles
3 did not commence until the Western Powers with their
4 so-called civilization including a long history of
5 wars and conquest by force, opened its doors and brought
6 to its shores trade, commerce and contacts with the
7 outside world. Colonization by force and imperialism
8 was in full swing. It is not passing strange that
9 after being compelled to emerge from its long retirement
10 Japan found itself embroiled in world affairs, intrigues
11 and wars. It became awakened to new interests in
12 life. Its population increased rapidly and its home
13 resources were not sufficient to support its people.
14 The Tribunal is well aware of the fact that only a
15 small portion of the land in Japan is arable and on
16 slopes which make agriculture extremely difficult.
17 It was soon recognized that the arable land available
18 was not sufficient to support its people and particularly
19 as the population had been increasing by almost a
20 million babies each year. Prosecution's interpretation
21 of Exhibit 865 (GG 24) was dispelled by the testimony
22 of OBATA.^a The primary purpose of the population
23 policy was one of health and not pronounced until 1941.
24
25 16. The Government attempted to increase
15. a. T. 29,151-29,152.

1 the food supply by expanding the area of available
2 arable land and rotation of crops and some success
3 was achieved. Further success was obtained by
4 encouraging agricultural development in Korea and
5 Formosa. Emigration was encouraged but proved a
6 failure due to the various bars erected by many of
7 the Western Powers. Faced with an economy of scarcity
8 it would have been criminal on the part of the Japanese
9 Government to sit idly by and do nothing.

10 17. The evidence shows that the only policy
11 left for Japan to adopt was domestic industrialization
12 and foreign trade. Taking her cue from the Western
13 Powers, Japan ascertained how industries could be
14 developed. She learned how to reproduce machinery
15 and even to improve on it in some ways. She learned
16 how to build steam ships. She developed electric power
17 and established a transportation system. Being an
18 island nation with a scarcity of raw materials she
19 found it necessary to support her civilian economy to
20 import materials from many regions for manufacture and
21 use in Japan as well as the exportation of finished
22 products. The latter step was necessary in order to
23 obtain foreign exchange to pay for vital imports. The
24 ability of the Japanese industry to expand was
25 practically wholly dependent on foreign raw materials

1 which in turn was governed by the foreign exchange
2 situation which was always acute from 1925 to 1940.
3 Japan had to face the issue squarely of how to take
4 care of its teeming population since its own resources
5 were inadequate.

6 18. Because of these economic conditions
7 prevailing in Japan, her industries and trades, domestic
8 as well as overseas, could not be left entirely to
9 drift or continue in free competition. Governmental
10 control of industries and trades was not peculiar to
11 Japan. The 20th Century has witnessed a growing trend
12 in practically all the countries of the world toward
13 planned economy and government control of trades and
14 industries. The National Recovery Act in America,
15 commonly called the N.R.A., is a typical example. The
16 unusually large number of small industries and trades
17 in Japan made her particularly susceptible to the
18 need for government control. It was necessary that
19 some form or extent of control be exercised in order
20 that Japan could overcome her economic difficulties
21 at home and abroad and to develop her industries and
22 trades. Moreover the evidence shows that the conditions
23 which most frequently and strongly urged her to adopt
24 control measures were those of foreign markets and
25 the balance of foreign exchange. Japan's economy,

1 chiefly depending on export and import for its
2 existencé was being fatally affected by the policies
3 of foreign countries and it was necessary that she
4 take measures to adjust and regulate her industries
5 and trades.

6 19. The defense contends that the prosecution
7 has failed to sustain its burden of proof that beyond
8 a reasonable doubt Japan's economy was geared for
9 aggressive war. On the contrary a resume of the
10 competent evidence discloses it was a normal develop-
11 ment, except for a modest diversion for the necessities
12 of the China Incident and designed to aid the civilian
13 population. The evidence about to be reviewed also
14 definitely establishes that by means of the economic
15 blockade and military encirclement Japan was forced
16 to act.
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20. Government control of industries had been undertaken in Japan many years prior to 1928, the inception of the alleged conspiracy. Apparently the prosecution relies on HIROTA's pronouncement of August 7, 1936 as establishing a governmental policy for economic development for the purpose of preparing for war.^a This document on which the prosecution relies specifically states that Japan's position with respect to East Asia was to be accomplished "by dint of diplomatic policy and national defense." The prosecution interprets the words "national defense" as used in this document to mean war. If this interpretation is correct, then every nation in the world (and there are many who have appropriated money and backed policies for national defense) would be equally guilty of "beguiling the peace." In the paragraphs of this document not read by the prosecution, it is crystal clear that a policy was adopted for securing peace in East Asia and contributing to the well being of the whole world and that Japan should be built up inwardly. It must be borne in mind that at this time Japan had withdrawn from the League of Nations and the world situation as it then

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a. Fl. - Ex. 216, T. 2727-2728.

1 existed made it necessary for Japan to adopt a
2 progressive policy for her own well being. Certainly
3 the adoption of a policy to contribute to the peace
4 of the world cannot be condemned.

5 21. Apparently the prosecution contends
6 that this document marked the beginning of a conspir-
7 acy of economic preparations for war. If this be
8 true, no explanation is offered of Japan's previous
9 laws tending towards control of industries and com-
10 merce. Furthermore, if it be true, the prosecution's
11 theory that it was for war must fall because it con-
12 tends that the Army caused the fall of the HIROTA
13 Cabinet. It is generally recognized that cabinets
14 rise and fall as a result of differences of opinion
15 as to their fundamental policies. The prosecution
16 accepts the testimony of TSUGITA that the responsibil-
17 ity for the fall of the HIROTA Cabinet rested on the
18 Army and that the War Minister finally resigned and
19 HIROTA could no longer maintain his Cabinet.^{a.} It
20 also adopts the Home Ministry report that "the Army
21 authorities stated that they could not do business
22 with a party whose policy for administrative reform
23 was opposed to the policy demanded by the Japanese
24
25 21.

a. FF-1.

1 people for the existence and expansion of Japan as a
2 stabilizing power of East Asia -- the abandonment of
3 which would cramp Japan into her islands and prevent
4 her from accomplishing her mission." ^{b.} The conclusion
5 from the prosecution's review of the facts with regard
6 to the resignation of the War Minister is irresistible
7 that the Army disagreed with HIROTA's policy. When
8 the HIROTA Cabinet fell its governmental policy fell
9 with it. In its argument that the economic conspiracy
10 continued, the prosecution claims that on February 20,
11 1937 the HAYASHI Cabinet, although made up of differ-
12 ent personnel, continued the policy of the HIROTA
13 Cabinet. That this conclusion is baseless is demon-
14 strated by the fact that the prosecution fails to
15 cite any evidence in support thereof. It is merely
16 content to cite exhibit 218 which wholly refers to a
17 third administrative policy towards North China un-
18 related to HIROTA's policy. In the absence of any
19 evidence, it cannot be assumed that the HAYASHI
20 Cabinet or any of its successors concurred in the
21 HIROTA policy. All these cabinets rose and fell
22 because of differences of fundamental policies. Thus,

24 21.

25 b. E-25.

c. E-28.

1 the prosecution's basic claim that the various plans
2 later adopted stemmed from the HIROTA policy of 1936
3 is not supported by the evidence.

4 22. Since the prosecution has elected to
5 accept the date of August 7, 1936 as the commencement
6 of an alleged conspiracy for economic preparation
7 for war, there can be no claim that the following
8 pronouncements and bills which were adopted by the
9 Japanese Government prior to 1936 were designed for
10 such purposes although some of them are referred to
11 by the prosecution. Furthermore, they show that
12 they were not so designed. They are reviewed here
13 to show the background and basic trend of Japan's
14 economy.

15 23. On January 31, 1930 State Minister
16 FAMAGUCHI told the Diet that the country's efforts
17 should be directed in the promotion of industries
18 and development of trade, and for that reason the
19 gold embargo had been lifted the previous November.^{a.}
20 His resume of Japan's economics can be searched in
21 vain for any indication that it was the government's
22 policy to prepare for any war. It was about this
23 time when the depression and unemployment was plaguing

24
25 23.

a. T. 24950-24958.

1 Japan. Minister TAWARA on April 27, 1930 dealt
2 with the remedies against these conditions.^{b.} He
3 spoke of the necessity of restricting imports, pro-
4 moting exports and urged greater production in Japan
5 to overcome these difficulties so as to help the
6 Japanese civilian economy. He urged the development
7 of new markets in other parts of the world and en-
8 couraged exportation of commodities. Mention was
9 made by him of the weaknesses of wasteful competition
10 and he argued for coordination and industrial develop-
11 ment. His speech was a typical one which could be
12 similarly expected of statesmen in any country speaking
13 before a national legislative body. The next month
14 the Shipping Guild Bill was adopted which dealt with
15 the welfare of the shipping industry and the rational-
16 ization of shipping circles.^{c.}

17
18 24. The next year on February 28, 1931 the
19 Major Industries Control Bill was introduced in the
20 House of Representatives. This bill was devised for
21 the purpose of stabilization of those industries and
22 its purpose was alien to any thought of war.^{a.}

23 25. After 1931 the economic depression
24 centering in the rural communities reached its depth

25 23. b. Ex. 2771-B,
T. 24959-63.
c. T. 24966.

24. a. Ex. 2772-A, T. 24968.

1 and the social and political insecurities became
2 aggravated during the Cabinets of WAKATSUKI, INUKAI,
3 SAITO and OKADA.^a In order to assist Japan's
4 internal economy and defeat this depression, the
5 Capital Flight Prevention Bill was introduced in the
6 Diet on June 4, 1932.^b This bill was designed to
7 prevent the flow of Japanese capital overseas. As a
8 result of the anticipation of the fall in the value of
9 the yen, it was in no way related to either preparation
10 for or waging of war. The Japanese foreign exchange
11 rate was gradually declining. Speculative dealings
12 in exchange businesses were occurring and in order
13 to control this situation the Foreign Exchange Control
14 Bill was introduced in the Diet on February 16, 1933.^c
15 The evidence shows that most countries in the world
16 were practicing exchange control at that time. Was it
17 therefore wrong for Japan to exercise control over
18 all phases of foreign exchange?
19

20 26. It was recognized that Japan's iron
21 manufacturing industry was seriously affected by
22 imported goods and it was difficult to supply steel
23 at a low price to meet an ever-increasing demand.

24 25.

- 25 a. UEMURA - T. 25202.
b. Ex. 2773-A, T. 24970-24971.
c. Ex. 2774-A, T. 24972-24974.

1 Consequently, the bill to establish the Iron
2 Manufacturing Company was introduced in the Diet on
3 February 28, 1933.^{a.} It was felt at that time that
4 with the assistance of special funds from the govern-
5 ment, a rationalization of the industry could be
6 planned and low cost of production promoted and the
7 industry would thereby be placed on a stable basis.
8 Here, too, there was no thought or mention of planned
9 aggression.

10 27. Four months later in June 1933 the
11 London International Economic Conference ended in
12 failure. Perhaps if it had been successful, the
13 economic disturbances in the world and hostilities
14 which followed might have been avoided. As a result
15 of the failure of the London Conference, it was recog-
16 nized by Minister TAKAHASHI on January 24, 1934 in a
17 speech to the Diet that the overcoming of the depres-
18 sion by international cooperation became impossible
19 and that it was becoming the policy of all of the
20 powers to strengthen their self-protection policies
21 and carry out self-sufficiency principles of national
22 economy at home.^{a.} Perhaps he had in mind such

24 26.
25 a. Ex. 2774-B, T. 24976.

27.
a. Ex. 2776, T. 24996.

policies as the Ottawa Conference of 1932.

1
2 28. On March 10, 1934, again apparently
3 referring to the failure of the London Economic
4 Conference, Mr. TAKAHASHI stated, on the introduction
5 of the Adjustment of Trade and Protection of Commerce
6 Bill in the Diet, that there was no sincerity for
7 international cooperation in world commerce and that
8 there was a marked tendency among the countries to
9 adopt selfish policies.^a He significantly pointed
10 out that other countries were gradually building a wall
11 against Japan's export trade by such methods as re-
12 stricting their imports from Japan. In order to over-
13 come this, he stated it was the intention of the
14 Japanese Government to establish a system of regulating
15 trade and obtaining a balance of international incom-
16 ings and outgoings; of regulating the import duty and
17 protecting Japan's commerce by prohibiting and con-
18 trolling imports and exports. He also pointed out
19 that in view of the then current situation, it was
20 unavoidable for Japan to make temporary arrangements.
21

22 29. On May 11, 1936 the Automobile Industry
23 Control Bill was introduced in the Diet because, as
24 explained at that time, the industry was not on a
25 28.

a. Ex. 2777-B, T. 25000-25002.

1 firm foundation and the situation at home and abroad
2 necessitated a bill for the production of automobiles
3 for the general people. At that time the automobile
4 industry in Japan was in its infant stage and the
5 automobiles it had were supplied by foreign countries
6 and assembled in Japan.^a With respect to the motor
7 vehicle industry, the prosecution is content to quote
8 from the plans but fails to cite any evidence about
9 the production of one single automobile, one tank,
10 one locomotive or one freight car, pursuant to those
11 plans or that Japan even had the facility for such
12 manufacture of these.^b

13 30. The figures cited by the prosecution and
14 incidentally the source thereof not disclosed by
15 Liebert^a of the expansion of Japan's aircraft
16 industry for the purpose of dominating and controlling
17 the world are to say the least ridiculously low. It
18 states "The undisputed statistics show that from 1935
19 to 1941 army aircraft bodies increased from 349 to
20 3,787, navy aircraft bodies from 408 to 2,080, and
21 total military aircraft from 584 to 11,654."^b Need
22

23 29.

24 a. Ex. 2778-A, T. 25002, 25004.

b. F-19, 20.

25 30.

a. T. 8380, 8381.

b. F-21.

1 we do more than to point to the plan of the United
2 States^c of January 1940 to turn out at least 50,000
3 military and naval planes per year which plan as we
4 know was consummated and almost doubled.

5 31. An examination of Japan's financial
6 situation up to 1936 discloses that in 1931 expendi-
7 tures were reduced by ¥338,000,000. This policy was
8 adopted to reduce prices of commodities to cope with
9 the depression and to balance Japan's foreign trade.
10 When Great Britain went off the gold standard in
11 September 1931, it became clear that Japan could no
12 longer continue its deflation policy. In December
13 of that year Japan suspended the gold standard. After
14 1932 she entered into a reflation policy by increasing
15 financial expenditures and encouraged the demand for
16 goods and labor. Because of this, the prices of
17 commodities rose and business conditions improved.
18 The export of Japanese goods was made easier. Expendi-
19 tures of the government started to increase after the
20 1932 fiscal year. Since 1933 and up to 1936 there was
21 hardly any increase and some decrease occurred in
22 1934 and 1935. The financial expansion during the
23 eight years from 1920 to 1928 of ¥455,000,000 was
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25 30.
c. T. 25470.

1 almost equal to the ¥467,000,000 for the eight years
2 from 1928 to 1936.^{a.}
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31.
a. T. 25421 - 25428.

1 32. The financial policy of Japan, its plans
 2 for increasing taxation, inflation of currency and
 3 high prices was explained to the House of Representa-
 4 tives by SAKURAUCHI on January 21, 1937. He pointed
 5 out that prices had increased 32% since 1931 while
 6 wages increased only 15% and that if prices went
 7 higher the life of the people in Japan would be menaced.
 8 He deplored the precedents of Russia and Germany. ^{a.}
 9 On the same day Minister of State BABA pointed out
 10 that the government had revised its decree based on
 11 the Foreign Exchange Act in view of the increase in
 12 speculative importations and that temporary emergency
 13 measures had been taken. ^{b.}

14 33. That national economic selfishness is
 15 a curse was recognized on February 15, 1937 when Mr.
 16 YUKI discussed the development of foreign trade. He
 17 pointed out the necessity of a prudent policy with
 18 regard to exchange rates and that international
 19 economy was being frustrated by the ideology of economic
 20 nationalism. He claimed it would alleviate the situa-
 21 tion of international relations and contribute to
 22 world peace to break the deadlock of international
 23 economy. ^{a.}
 24 One week later, he also introduced the
 25 Bill Concerning Export Control Tax Law, at which time

32. a. Ex. 2779, T. 25,005 - 25,009.

b. Ex. 2780-A, T. 25,008 - 25,009.

33. a. Ex. 2780-B, T. 25,009 - 25,011.

1 he stated various countries were taking measures such
2 as raising customs duties and limiting imports, and
3 that they were "being taken especially against Japan-
4 ese exports." As a result he believed it absolute-
5 ly necessary to enlarge the export compensation system
6 by establishing a new import compensation system. ^{b.}

7 34. In striving to better Japan's civilian
8 economy it was necessary to adopt hand in hand with
9 the foregoing measures a program with respect to her
10 shipping industry, because she was an island nation.
11 The United States Department of State reports that
12 during the 1920's Japan's shipbuilding industry entered
13 a long period of depression when ship construction
14 dropped to 42,000 gross tons in 1927. In 1929 the
15 government framed a program for the assistance of ship-
16 building in the form of loans on easy terms, but owing
17 to the world economic depression which followed, little
18 use was made of this facility. ^{a.} The report further
19 shows that in 1932 the government introduced the first
20 three Scrap and Build Plans. The first plan resulted
21 in the scrapping of 94 vessels of approximately 400,000
22 gross tons and the building of 31 new vessels of about
23 200,000 gross tons. The cost was approximately
24

25 33. b. Ex. 2780-C, T. 25,011, 25,012

34. a. Ex. 2768, T. 24,910

1 Y55,000,000, of which the government's subsidy was
2 only Y11,000,000. The second and third plans in 1935
3 and 1936 were on a smaller scale, their combined
4 result being the scrapping of 100,000 gross tons and
5 the construction of only 17 vessels of about 100,000
6 gross tons. The three plans resulted in the scrapping
7 of 500,000 gross tons and the construction of 48 new
8 ships of 300,000 gross tons.^{b.} The cost of these
9 three improvement plans to the government amounted to
10 only \$4,000,000, which we submit is a mere drop in the
11 bucket for any country accused of developing a ship-
12 ping program for the purpose of engaging in aggressive
13 war.

14 35. The report further shows that a further
15 plan came into operation in April 1937 for the build-
16 ing of passenger and passenger cargo liners. Before
17 the outbreak of the China Incident the trend of ship-
18 building was for the construction of luxury liners for
19 deep-sea service, but after the China Incident, Japan's
20 policy was reversed from large-sized vessels for deep-
21 sea service to small and medium-sized bottoms for
22 coastal trade.^{a.} We submit that this is a definite
23 indication that Japan's shipbuilding industry was not
24

25 34. b. Ex. 2768, T. 24,911, 24,912.

35. a. Ex. 2768, T. 24,912, 24,915

1 designed for preparation for the China War nor for the
2 Pacific War. As an island nation, if she had been
3 planning an aggressive war, her first thought would
4 have been directed towards adequate deep-sea shipping
5 facilities, and in so far as volume is concerned, if
6 she had been preparing to conquer the world, it hardly
7 seems necessary to mention the infinitesimal number
8 of ships Japan built and was building when compared
9 to the combined powerful marine fleets of the United
10 States, Great Britain and their allies. Would she
11 scrap any ships if she was preparing for war? The
12 report further shows that a great majority of the
13 ships built were of a very small tonnage. Many of her
14 vessels were made of wood.^{b.}

15 36. Although the prosecution introduced
16 evidence on Japan's marine shipbuilding activities, it
17 probably realized that it had failed to prove a most
18 vital point, as its evidence showed that Japan, as an
19 island nation, was not preparing for aggressive war,
20 because it had not developed a merchant marine. It
21 changed its position and tried to forestall a presen-
22 tation of the true facts regarding shipbuilding by
23 stating, when the defense was introducing evidence,
24

25 35. b. Ex. 2768, T. 24,915, 24,929

1 "It is not the claim of the prosecution that the control
2 of shipping was for the purposes of war." ^{a.} Neverthe-
3 less it has again changed its position because it
4 deals with the subject in its summation. ^{b.} It relies
5 on Liebert's testimony. Liebert did not disclose
6 the document from which he obtained the information
7 set forth in his testimony with respect to shipbuild-
8 ing. Although the defense tried to obtain all the
9 documents from which Liebert culled out his testimony,
10 it did so in vain. ^{c.} We were, however, able to find
11 the document on which Liebert based his shipbuilding
12 testimony. It is the United States Department of
13 State report which is summarized above. ^{d.} An exam-
14 ination of that document clearly demonstrates that it
15 was the one from which Liebert got his information,
16 as the wording of his testimony is in some instances
17 practically identical with this report, and the con-
18 tinuity of both documents are the same. An examina-
19 tion of the United States Department of State report
20 demonstrates how inadequately Liebert summarized it.
21 It also shows that Liebert presented to the Tribunal a
22 one-sided picture of the shipping industry. He failed
23 to reveal to the Court the number of ships and their
24

25 36. a. T. 24,965.

b. F. 16.

c. T. 8305, 24,813, 28,819, 28,820, 28,821

d. Ex. 2768.

~~gross tonnage which was scrapped by the Japanese~~

1 Government. He confined his direct testimony to
2 stating only the number of new ships built. His
3 testimony was carefully worded to create an impression
4 that the new ships were built entirely by government
5 subsidies.^{e.} Whereas in truth and in fact, the
6 government only subsidized the program to the extent
7 of approximately one-fifth of the total cost. In
8 view of the above, it is difficult to understand the
9 prosecution's claim that the defense does not challenge
10 Liebert's testimony with respect to shipbuilding.^{f.}

11 It is no wonder that the prosecution admitted it was
12 on the horns of a dilemma when the defense produced
13 the United States Department of State report, which
14 it then admitted was used by Liebert.^{g.}

15
16 37. The prosecution also states "the defense
17 denies that any portion of the increase in shipbuild-
18 ing from 402,000 tons in 1938 to 605,000 tons in 1940
19 was for war purposes."^{a.} It does not reveal the evi-
20 dence supporting such an increase. Apparently the
21 prosecution took these figures from a plan which was
22 adopted in 1939 and assumed that that amount was
23 actually constructed. This plan was referred to by

24 36. e. T. 8,318, 8,322 37. a. F 16.

25 f. F 16

g. T. 24,903

1 Liebert. Even if the planned increase to 505,000
 2 tons had been accomplished, it would have been ridicu-
 3 lously low for a country bent on dominating lands
 4 beyond the Pacific. The defense introduced the total
 5 tonnage of vessels launched from 1934 - 1940. The
 6 shipbuilding laws which Japan passed in 1939 show
 7 no planning for any aggressive war. Even in 1941
 8 there was a woeful lack of sufficient shipping to
 9 carry on any protracted war. Documents written
 10 January 1, 1941, substantiate this.

11 38. The United States Department of State
 12 report further states "For several months after the
 13 outbreak of the China Incident (7 July 1937), it is
 14 true, the Japanese economy remained ostensible on a
 15 peacetime basis in practically all its aspects; war-
 16 time control measures were adopted only when strategic
 17 needs created urgent requirements." It also pointed
 18 out that even before the war, it was obvious that Japan
 19 could not develop a "war economy" and at the same time
 20 trade in manufactured goods in keeping with her
 21 policies.

22 39. In support of its claim that Japan was
 23 preparing economically for war, the prosecution relies
 24 heavily on Exhibit 841 and 842. Exhibit 841 is an
 25

37. b. T. 24,919

38. a. Ex. 2797, T. 25,093

c. T. 24,919, 24,932

d. T. 24,890, 24,895

outline for a five-year plan for production of war
materials of the War Office dated June 23, 1937.

We need not concern ourselves with this, because 14
days later upon the sudden outbreak of the China
Incident, "it died a natural death" as testified to
by OKADA.^{a.}

39. a. T. 18,278

40. Prosecution exhibit No. 842 is divided
1 into three parts:

2 I. Summary of Five-Year Program of Important
3 Industries Prepared by War Ministry, dated 29 May 1937.

4 II. Resume of Policy Relating to Execution of
5 Essential of Five-Year Program of Important Industries.

6 (Trial Draft Prepared by Army, dated 10 June 1937.)

7 III. Summary of Program for Extension of
8 Productive Capacity. (Prepared by Planning Board,
9 dated January 1939.)
10

11 There is no evidence that Part I or Part II were
12 approved by the Cabinet and the prosecution does not
13 claim that they, as such, were adopted. If Parts I and
14 II of Exhibit 842 were incorporated in Exhibit 841
15 (prosecution calls this Plan III) then the undisputed
16 testimony is that they all "died a natural death," at
17 the outbreak of the China Incident. The evidence is,
18 and the prosecution admits, that Part III of Exhibit
19 842 was not adopted by the cabinet until January 1939^a.
20 Therefore, it is quite apparent that this plan was not
21 put into effect and designed for the purpose of prepar-
22 ation for the China Incident of 1937. The outbreak of
23 the Incident necessitated the organization of a makeshift
24 plan in 1938 which had no relation whatsoever to the
25

40. a. F 9

1 plan set forth in Exhibit 842.^b The prosecution asks,
2 if these plans were defensive, "against what nation did
3 Japan think it necessary to execute defensive prepara-
4 tion?" The prosecution then answered the question by
5 admitting that OKADA testified that the plan was
6 prompted by fear of Russia.^c OKADA pointed out that
7 because many of Japan's important industries depended
8 heavily on the importation of materials from abroad,
9 the economics of Japan were very shaky, and as they
10 were not independent there was a great tension. Further-
11 more, at that time the world divided up into economic
12 blocs and Japan believed it was necessary at that time
13 to develop every industry so that she could continue
14 as a modern state and provide for the welfare of her
15 people.^d OKADA fully explained that development
16 by the U.S.S.R. of its industries was extremely
17 startling. After Russia had completed its first and
18 second five-year plans, Japan believed that the Soviet
19 was about ready to begin a third five-year plan.^e The
20 prosecution has failed to show any evidence that the
21 reason for the adoption of the plan was otherwise than
22

23 40. b. T. 18,318

c. F 7.

24 d. T. 18,276

e. T. 18,274

25

1 as testified to by OKADA. That plans one and two drafted
2 in 1937 were prepared for the purpose of commencement
3 of a war in 1941 would have required clairvoyance on
4 the part of Japan, considering the momentous world
5 events which occurred during that period of time over
6 many of which Japan had absolutely no control. Further-
7 more, it is difficult to understand the prosecution's
8 mathematics that a four-year plan adopted in 1939 would
9 be completed in the same year as a five-year plan
10 adopted in 1937 if the latter had been accepted.^f

11 41. We submit that all the evidence points to
12 a clear conclusion that all the laws pertaining to
13 economics passed prior to 1937 had no relation to
14 aggressive war, nor to the plans I and II of 1937
15 which were admittedly never adopted. Furthermore, the
16 laws passed after 1937 had no relation to either Plans
17 I or II, and certainly those passed up to 1939 had no
18 relation to Plan III, which was not adopted until 1939.
19 Even if they were related, the prosecution's argument
20 is difficult to follow. It assumes that all the
21 plans were for aggressive war.^a It then states, in
22 substance, that considering all of Japan's conduct prior
23 to 1937, its aggressive action between 1937 and 1939,
24

25 40. f. F 9

41. a. F 5; F 6

1 and planning and waging of aggressive war after 1939,
 2 the only conclusion is that the plans were for aggress-
 3 ive war. Such reasoning, we submit, is illogical.

4 The prosecution assumes a conclusion, and to support it,
 5 assumes other conclusions, upon all of which it has the
 6 burden of proving the facts, and which burden it fails
 7 to sustain.

8 42. The Iron and Steel Industry Bill of
 9 July 29, 1937 was proposed because of the dependence
 10 of these industries on foreign countries. Mr. YOSHINO
 11 stated at the time the bill was introduced that self-
 12 sufficiency, including the development of further
 13 overseas markets for iron and steel products, was
 14 necessary.^a

15 43. The bills introduced in the Diet in the
 16 latter part of 1937 were primarily designed for self-
 17 sufficiency and many of them were adopted because of
 18 measures being taken by foreign countries to prevent
 19 Japanese goods from being imported. Some of these laws
 20 as enacted were to be abolished one year after the China
 21 Incident terminated. Included were the Bill Concerning
 22 Adjustment of Foreign Trade of August 2nd, 1937;^a the
 23 Gold Production Law of August 5th, 1937;^b the Temporary
 24

25 41. b. F 6

42. a. Ex. 2781-A, T. 25,013, 25,015

43. a. Ex. 2783, T. 25,027 - 25,033

b. Ex. 2784, T. 25,034, 25,038

Law Controlling Shipping of September 10th, 1937;^c the
 1 Temporary Capital Funds Adjustment Law of September,
 2 1937;^d the Temporary Measures Concerning Exports and
 3 Imports of September 10th, 1937;^e and the Law Providing
 4 for Emergency Trading in Rice effective December 1st,
 5 1937.^f UEMURA testified that after the China Incident
 6 had broken out the public felt uneasy about the prospect
 7 of importing cotton. The Government felt the necessity
 8 of establishing synthetic plans and although the
 9 Planning Board was established in 1937 the Commodities
 10 Mobilization Plan was very rough and it was not until
 11 1938 that it took on definite shape.^g
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22 43. c. Ex. 2786, T. 25,041, 25,044;
 23 Ex. 2790, T. 25,053.
 24 d. Ex. 2768, T. 25,091, 25,100
 e. Ex. 2791, T. 25,054.
 25 f. Ex. 2787, T. 25,044, 25,045
 g. Ex. 2802, T. 25,107, 25,215

1 44. The prosecution under the heading of
2 Expansion of War Industries first mentions the forma-
3 tion of Japan's Electric Generation and Transmission
4 Company, citing Liebert's testimony.^a Liebert does
5 not disclose the source of his conclusion to the ef-
6 fect that this company had as one of its objectives
7 the increase of Japanese electric power resources and
8 development to meet military requirements. On numer-
9 ous occasions the Tribunal has stated the Liebert's
10 opinions and conclusions would be disregarded. The
11 defense were not permitted to examine OWATA on this
12 conclusion for the above reasons.^b Yet the prosecution
13 uses Liebert's opinions in its summation.

14 45. The reason for the adoption of the Bill
15 for State Control of Electric Power was explained to
16 the Diet on January 26th, 1938. It was pointed out by
17 NAGAI that electricity was not only indispensable to
18 national life for lighting and heating purposes but
19 also played a part as motive power for all industries
20 and to provide against war as well as for peaceful
21 purposes.^a

23 44.

a. F 10!

b. T. 18,255, 18,256

24 45.

a. Ex. 2792-A, T. 25,055, 25,058

25

46. These purposes were fully explained by
1 OWATA. The development of water power in Japan had
2 been in a piecemeal sort of a way and it was necessary
3 to develop waterpower on a large scale to avoid waste
4 of waterpower. The production of electric power in the
5 East was large but in the West it was scarce. The
6 joining of the generating stations in East and West
7 by power lines did result in economizing on coal and
8 the eliminating of the generation of electricity by
9 coal. Furthermore the electric power industry had a
10 tendency to concentrate around large cities and it
11 was necessary to devise some means to send power into
12 the agricultural districts. In addition it would be
13 possible to send electrical power to large scale
14 industries and for lower cost. It also seems unneces-
15 sary to point out that the bill for state control of
16 electric power had been adopted prior to the approval
17 in January 1939 of Plan III^a and could under no cir-
18 cumstances be considered as carrying out the latter
19 plan. It is quite apparent, because of the absence
20 of any date of publication of the figures quoted by
21 Liebert^b and of the absence of any date on the graph
22 he submitted,^c that these figures and charts were
23
24
25 46. a. Ex. 842
b. T. 8282, Liebert's Aff., p. 6.
c. Ex. 843

1 drawn under Liebert's direction and the classification
2 of basic war industries and war supported industries
3 is his personal classification. If these were figures
4 and charts of the Ministry of Commerce and Industry
5 it nowhere appears on what date they were published
6 or prepared. Thus based on Liebert's own classifica-
7 tions of what is a basic war or war supported indus-
8 try he and the prosecution asked the Tribunal to draw
9 conclusions that the large increase of electric power
10 was consumed by war and war-supported industries and
11 that there was no change in consumption by civilian
12 companies, utilities, and civilian uses. In the ab-
13 sence of any evidence as to what constituted basic
14 war and war industries it is submitted that Liebert's
15 testimony and conclusions are valueless. In other
16 words, we submit neither his figures^d nor the Chart^e
17 are original documents but prepared at his suggestion.
18

19 47. The prosecution also relies on the
20 economic opinions of news reporter Goette regarding
21 China.^a He was permitted to give his opinions and
22 conclusions on economic matters over due and timely
23 objections.^b In all fairness, considering the re-
24 strictions placed on defense witnesses against

25 46. d. T. 3281, Liebert's Aff. p. 6

e. Ex. 843.

47. a. E 87. b. T. 3,866.

1 expressing opinions, all of Goette's opinions and
2 conclusions should be disregarded,

3 48. In discussing the Machine Tool Industry
4 and the Precision Bearing Industry the prosecution
5 merely cites Plan 3 of January 1939, and concludes
6 that Japan imported enormous quantities of machine
7 tools basing this assertion on Liebert's dubious
8 charts and figures.^a Liebert's assertion that be-
9 tween 1937 and 1940 the Army purchased approximately
10 22½ million dollars worth of machine tools is un-
11 supported.^b With respect to his chart it is inter-
12 esting to note that although he quotes figures showing
13 production import and export, his graph fails to
14 portray the exports. Here again the Ministry of
15 Commerce and Industry and Machine Tool Association
16 figures are undated and apparently were prepared
17 from figures supplied by Liebert, the source of which
18 is unknown. For the same reason the chart and figures
19 with respect to the Precision Bearing Industry should
20 also be disregarded.^c The reason for the development
21 of the Machine Tool Industry Department in Japan was
22 well expressed when the bill was introduced in the
23 Diet on March 10, 1938.^d It was explained that the
24
25

48. a. F19. c. T. 8,357
b. T. 8,356 d. Ex. 2793, T. 25,063-25,065

1 industry had only recently been developed and there
2 were difficulties from the point of manufacturing
3 ability and techniques. The capacity for the manu-
4 facture of machine tools was consequently inferior
5 to those of foreign goods and in the past Japan had
6 to depend on import of machine tools and it was
7 thought proper that the management of the industry be
8 placed on a rational foundation.

9
10 THE PRESIDENT: Well, you have reached the
11 end of a lengthy paragraph. We will recess for
12 fifteen minutes.

13 (Whereupon, at 1045, a recess was
14 taken until 1100, after which the proceed-
15 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: It is necessary that the
4 summations should be served on the Judges two or three
5 days before they are read because in one case they
6 must be translated. I understand there is some delay
7 in serving the summation about to be read or to be
8 read after yours, Mr. Logan.

9 Mr. Logan.

10 MR. LOGAN: I shall continue on page 41,
11 paragraph 49.

12 49. On March 17th, 1938 Prince KONOYE spoke
13 on the introduction of the National Mobilization
14 Bill.^{a.} It finally became law in May 1938 which was
15 ten months after the China Incident had commenced. On
16 February 24, 1938, Mr. SAITO spoke in the Diet on the
17 necessity for the adoption of a national General Mobil-
18 ization Bill.^{b.} He pointed out that the China Incident
19 "had assumed serious proportions beyond our imagination,"
20 that Japan's policy of non-expansion and settlement on
21 the spot were incapable of fulfillment. He was unable
22 to foretell the future of the Incident but felt it
23 might be an extremely long way off. He emphasized
24 that the Incident was proving to be the source of all
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(49. a. Ex. 2794, T. 25069, 25071.

b. Ex. 2792C, T. 25061, 25063)

1 troubles, that Japan's future was beset by great dif-
2 ficulties and that her national defense should be
3 strengthened by enforcing a certain degree of control
4 over personnel, resources and materials. Prince KONOY
5 also pointed out that the bill was necessary to replen-
6 ish munitions of war and to render smooth all national
7 activities necessary for the prosecution of war. The
8 mechanics of the bill was to enable the government to
9 take such emergency measures consonant with the actual
10 demands of the situation. He pointed out that at that
11 time there was in existence the Munitions Industry
12 Mobilization Law of 1918. But the law was not adequate
13 in its scope and because of the China Incident the bill
14 was offered to supplement the deficiencies of that law.
15 He stated, "The contents of this bill are, on the whole,
16 based on matters provided for in the Munitions Industry
17 Mobilization Law and in the various provisional laws
18 relative to the China Incident." ^{c.} The Bill contains
19 special provisions for the creation of a Deliberation
20 Council. With respect to this latter provision the
21 United States Department of State reported that the
22 provisions of the bill in setting up a council nullified
23 its military function saying "However the decision to
24 set up a National Mobilization Council of fifty members
25 (49. c. T. 25068, 25071)

1 (largely from the two houses of the Diet) to review
2 the measures applied under this statute tended to
3 nullify its effectiveness as a weapon of the Military
4 in the struggle for nationalized industries." The
5 United States report also quoted a leading Japanese
6 publication which stated, "On the whole even in 1940-
7 1941 Japan's economy was financed and operated by
8 private enterprise which disposed of profits and divi-
9 dends with relatively slight government interference.
10 Control in the sense of comprehensive state plans en-
11 forced on industries was still in embryonic form."
12 As a matter of fact, as testified to by UEMURA, Japan
13 was backward in preparation for national mobilization
14 as compared with other nations. In drafting the Nation-
15 al Mobilization Law he stated that reference was made
16 to Great Britain's Uniform National Defense Law of
17 World War I and subsequent legislation such as the Italy
18 and Czechoslovakia National Mobilization Law and the
19 United States National Mobilization Bill Number 5539
20 introduced in Congress in 1935 and then under consider-
21 f.
22 ation of the Upper House.

23 50. As explained by the witness UEMURA, who
24 was not cross-examined by the prosecution, the reason
25 (49. c. Ex. 2768, T. 25099
c. Ex. 2768, T. 25100
f. Ex. 2802, T. 25210, 25215)

1 why plan III was adopted in January 1939 was to aspire
2 to a well balanced development of the country's indus-
3 tries. Due to the China Incident the allocation of
4 materials for the expansion of the capacity productive
5 potential was not carried out as expected.

6 51. The prosecution has commented on the
7 establishment of the Heavy Industries in Japan, as ex-
8 plained in the United States Department of State report,
9 the reason for this was that if China and other nations
10 should become industrialized it was probable that light
11 industries would be established first, thereby reducing
12 Japan's exports and that Japanese industrial reorgan-
13 ization in favor of heavy industries should be carried
14 out as the only means of enabling Japan to continue as
15 an industrial nation. c.
16 The Bill for Light Metals
17 Manufacturing Industries such as aluminum and magnesium
18 was introduced on March 17th, 1939. The reason for its
19 necessity was for national defense, domestic demand,
20 exportation in peace time and the securing of a balance
21 of supply and demand as well as just and fair prices. b.

22 52. In discussing production of light and
23 non-ferrous metals the prosecution contents itself with
24 the statement of planned increases and an assertion that

25 (50. c. T. 25209)

(51. a. T. 25091, 25100

b. Ex. 2795A, T. 25073, 25075)

1 the planned increases were not realized. Apparently
 2 by ignoring it, it considers Liebert's testimony un-
 3 important. We concur in this in view of Liebert's
 4 admission on cross-examination that he obtained his
 5 facts and figures with respect to raw materials from
 6 the Japanese Government, control associations, trade
 7 statistics of the United States Government, publications
 8 of the United States Government, and other sources, it
 9 must be assumed that the figures Liebert chose were
 10 designed to fit the need and since he is not an expert
 11 his conclusions are not reliable.^{e.}

12 53. In support of its claim that the iron
 13 and steel industry was geared for war purposes, the
 14 prosecution relies on Liebert's conclusions unsupported
 15 by facts. Here we find Liebert making such statements
 16 as "Inormous quantities of scrap iron were imported. . ."
 17 unsupported by any facts. He sets forth figures com-
 18 paring the years 1938 and 1941 for such items as steel,
 19 special steel, steel ingots, pig iron, iron ore;^{b.} but
 20 these were only the planned increases and not actual
 21 increases.^{c.} He sets forth subsidies supposed to be
 22 paid by the Ministry of Commerce and Industry.^{d.} There

24 (52. a. T. 8774, 8775)

25 (53. e. T. 8322-8336.

b. T. 8327

c. T. 8326

d. T. 8323-8324)

1 is no evidence as to the exact source of his figures.
2 Liebert's testimony purports to set forth tables show-
3 ing production and imports of iron ore;^{e.} production
4 and imports of pig iron;^{f.} production and imports of
5 steel scrap;^{g.} and steel production and imports for
6 the years 1926-1941.^{h.} The authenticity of these
7 figures and their exact source is not disclosed by
8 Liebert and pursuant to the Tribunal's ruling, we
9 assume they will be disregarded. Even if they are not
10 disregarded, an impartial review of them demonstrates
11 that the increase was normal and not excessive. For
12 example, Liebert admitted that his figures for steel
13 production and imports as shown on prosecution exhibit
14 845 were prepared by draftsmen and employees of Economic
15 and Scientific Section of SCAP on the basis of informa-
16 tion supplied by Liebert.^{i.} He further admitted that
17 he had conferences with various associations and compared
18 their figures with other data from the United States
19 and Japan. Yet we find on the chart submitted, ex-
20 hibit 845, the notation, Source: Ministry of Commerce
21 and Industry, and it is undated. Thus it develops that
22 the figures represented in the graph did not wholly

24 (53. e. T. 8329-8330

25 f. T. 8331

g. T. 8332

h. T. 8333

i. T. 8665)

1 come from the Ministry of Commerce and Industry but
2 they are a conglomeration of figures from various sources
3 and all of which are entitled to absolutely no weight.

4 54. The Witness YOSHINO testified to the
5 background of the industry from 1868 to 1930. Prosecu-
6 sion's contention that ADACHI's testimony was given
7 without referring to any of the plans and is therefore
8 valueless is to say the least naive. His testimony was
9 based on facts and figures and dated charts found in
10 various governmental departments. In fact, there are
11 12 charts in evidence which were attached to his
12 affidavit.^{b.} Apparently the prosecution accepted
13 these facts and figures because they refused to cross-
14 examine him. An examination of ADACHI's testimony and
15 the charts attached to his affidavit demonstrate the
16 fallaciousness of prosecution's argument that the Iron
17 and Steel Industry of Japan was geared for aggressive
18 war. Chart 1 shows the market prices of bars and
19 plates. Chart 2 shows the steel consumption per capita
20 per annum of the various countries, showing that Japan's
21 consumption in 1931 equalled about one-seventh of the
22 United States of America. Chart 3 shows how Japan from
23 the years 1930-1940 was well back of Australia, Germany,
24 (54. a. T. 18211-18213
25 b. Ex. 2775, T. 24979, 24994)

1 United States, Russia, in ingot production and that
2 only England produced less than Japan. Chart 4 shows
3 the effect of the revision of tariffs on Japan's im-
4 ports. Chart 5 shows the increased production of pig
5 iron which it is submitted was a normal increase un-
6 related to any designs for aggressive war but as testi-
7 fied to by ADACHI, some of this production was necessary
8 for the military because of the China Incident. Chart 6
9 shows the production of finished steel which showed
10 a decline after 1938. Chart 7 shows the import of
11 iron ore which showed a sharp decrease from 1936 -
12 1938 and increase thereafter to 1941 when it again
13 dropped. The increase for the years 1938 - 1941, it is
14 submitted, were not excessive because of the China
15 Incident. Chart 8 shows the import of finished steel
16 and that except in the year 1937 the import of steel
17 material decreased from 1932 - 1942 with a small increase
18 in 1939. Chart 9 shows the percentage of increase of
19 export of finished steel rising sharply from 1932 -
20 1936 with a decrease until 1938 when the export of
21 finished steel increased again and decreased again
22 after 1939. The decrease in 1937 - 1938 of 410,000
23 tons was due to the China Affair. Chart 10, showing
24 the export of machines which means the export of trans-
25 formed steel material, was extremely large and increased

1 continuously from 1932 - 1939. This belies plans for
2 aggressive wars. Chart 11, showing the consumption of
3 finished steel, shows that it rose steadily to meet
4 promotion of civilian life in Japan and then had a
5 tendency during the period 1939 - 1941 to descend.
6 Chart 12 shows the planned consumption of finished steel
7 for military and civilian uses. The data contained
8 in this chart was presented in 1945 to the United
9 States Bombing Survey by the Iron and Steel Control
10 Association but was originally made by the government.
11 That there was no design for aggressive war insofar as
12 consumption of finished steel is concerned is shown by
13 this chart in that it was planned that civilian consump-
14 tion far exceed military consumption.
15

16 55. The necessity for the government's action
17 with respect to iron and steel was fully explained by
18 ADACHI. Japan was menaced by the import of iron and
19 steel from foreign countries and of the two hundred
20 manufacturers during the first World War one hundred
21 and fifty went into bankruptcy. In 1932 to 1940 the
22 increased production movement in Japan was no different
23 than in all countries after World War I. He cited
24 figures to sustain this contention. ^{b.} as collateral
25 (55. a. T. 24982, 24983
b. T. 24984)

1 security for the import of raw materials Japan was
2 forced to increase the amount of her exported steel and
3 machinery. Plans which were made by the Ministry of
4 Commerce and Industry in 1934 were made solely from the
5 standpoint of economy.^{c.} And in endeavoring to solve
6 the problem the amount for military and naval demands
7 was estimated at less than 10% of the whole which calcu-
8 lation was based upon the same demands of the Army and
9 Navy from 1896 to 1930. The plan was expected to come
10 to an end in 1938. Production of steel materials
11 reached its peak in 1938 a year after the outbreak of
12 the China Incident and thereafter decreased despite the
13 Incident. Consumption from 1932 to 1942 reached its
14 peak in 1939 and decreased thereafter. Imports reached
15 their peak in 1939.^{d.} The whole plan of the Ministry
16 of Commerce and Industry was civil economy and ADACHI
17 knew of no plan for promoting war. The large production
18 was planned out of necessity since Japan was turning
19 from a farming country to an industrial country as a
20 counter-measure to the increase in population and was
21 a contribution to the elevation of Japanese economic
22 life.
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(55. c. S. 24986
d. T. 24989)

1 56. The production of steel material de-
2 creased with the development of the China Incident.^{a.}
3 It was greatly affected by the prohibition of the
4 import of scrap iron in 1940. The amount of iron
5 ore in Japan greatly decreased. Consumption of pig
6 iron increased progressively from 1935 to 1941. Con-
7 sumption of scrap iron increased progressively to 1939
8 when it commenced decreasing. The Army and Navy re-
9 quirements increased after the start of the China Inci-
10 dent which was only natural for a country at war. And
11 the supply for the people in 1941 was reduced to the
12 degree of about 1921.^{b.} The prosecution apparently ac-
13 cepted ADACHI's testimony in toto as it failed to
14 cross-examine him.

15 57. The prosecution also failed to cross-
16 examine the witness LASUMI who testified of the govern-
17 ment's efforts for many years to obtain sufficient food
18 and how a food shortage - particularly rice - existed
19 in 1939 because of the continued dry weather in Japan
20 and Korea. He related the efforts of the government to
21 moderate the condition of 1939 and 1940 by fixing the
22 price but increased consumption in Korea resulted in
23 an extreme shortage of food in Japan proper.^{a.}

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25 (56. a. T. 24991
 b. T. 24994)
 (57. a. T. 25050-52)

1 58. On March 11th, 1940 the bill for Coal
2 Supply Law was introduced in the House of Representa-
3 tives.^{a.} It was explained that because of the insuf-
4 ficient supply all fields of Japanese national life
5 were menaced and that Japan did not have sufficient
6 coal to supply power plants and other industries. The
7 object was to increase the output and develop new mines.
8 The quality of the coal produced in Japan was not of
9 high grade.

10 59. The prosecution contents itself with
11 stating in conclusion that the only object of the con-
12 trol and increase of coal "must necessarily have been
13 the assistance of war industries." This in utter dis-
14 regard of the fact that it admits that Japan relied
15 upon the importation of coking coal which is necessary
16 in industrial plants. Lacking evidence that the Japan-
17 ese normal economy did not require the measures adopted,
18 the prosecution itself concludes that the bills relating
19 to the coal industry were not reasonable from the
20 point of view of self-defense.

21 60. It was not until March 15, 1940 that
22 the bill relating to synthetic chemical industries
23 was introduced in the Diet.^{a.} It was stated at that
24 time that these enterprises had only been recently
25

(58. a. Ex. 2796-A, T. 25076-8)
(60. a. Ex. 2796-B, T. 25078-82)

1 developed and that there was a lack of natural re-
2 sources. It was pointed out that the demand for in-
3 creased production was necessary after the outbreak
4 of the China Incident. The prosecution argument with
5 respect to the Japanese chemical industry is based on
6 two assumptions: (1) That the chemical industry plays
7 an important part in the manufacture of explosives and
8 war materials, and (2) That the chemical industries
9 underwent tremendous expansion during the years imme-
10 diately preceding 1941. We admit that the chemical
11 industry does play a certain part in the manufacturing
12 of explosives and war materials but submit that there
13 is no evidence in the case that the chemical industry
14 was developed for the purpose of preparing for war, nor
15 is there any competent evidence that the greater part
16 of it was similarly developed. It is well known that
17 the chemical industry plays an extremely important
18 part in normal civilian economy. We urge the Tribunal
19 to ignore the figures, conclusions, and opinions sub-
20 mitted by Liebert on Japan's chemical industry and de-
21 velopment. Admittedly, he is not an economist, and
22 on cross-examination he stated he examined hundreds of
23 documents, disregarding those which in his opinion he
24 considered inaccurate and he made a selection of only
25 ~~these documents which pointed out what he wished to~~

1 show.^{b.} A request was made while he was on the stand
2 on October 22, 1946 as to the source of his figures
3 with respect to the chemical industries and the defense
4 was never advised, as its request was parried by the

5 prosecution.^{c.} In other words, it is quite apparent
6 that Liebert started out to show that Japan was prepar-
7 ing for aggressive war and only accepted and presented
8 to this Tribunal figures which he selected and which
9 he thought showed this and he disregarded others. Such
10 an admission by the prosecution's chief economy witness
11 makes it imperative that his testimony be disregarded.
12 The Tribunal indicated that on the summation under such
13 circumstances a request that his figures be disregarded
14 would be entertained. Even if Liebert's figures were
15 true with respect to the chemical industry, they demon-
16 strate a normal growth of a newly developed industry.

17
18 61. Viewed from a financial standpoint, it is
19 impossible to arrive at a conclusion that Japan ever
20 prepared for aggressive war. The first turning point
21 of Japan's financial policy occurred after the outbreak
22 of the Manchurian Incident and this change had to be
23 made to meet the emergency conditions.^{a.} Her operations
24 had to be met by public borrowing. The second turning

25 (60. b. T. 8777
c. T. 8305)
(61. a. Ex. 2769, T. 24935-9)

1 point in Japan's financial policy began with the Feb-
2 ruary 26, 1936 Incident. The third turning point began
3 after the commencement of the China Affair which in-
4 volved an increase of taxes and further public borrowing.^{b.}
5 The fourth turning point occurred in January 1938.
6 From a financial standpoint, it is quite apparent that
7 none of these measures show any plans or preparations
8 for initiation of any aggressive wars.

9 62. The purpose of the Petroleum Control Bill
10 which was introduced in the Diet on March 4, 1936 was
11 explained by Mr. MATSUMOTO as being necessary due to
12 the then present situation of the oil refining industry
13 in Japan.^{a.} He recognized that Japan had to rely on
14 foreign countries for more than half of her supply of
15 benzine and crude petroleum and that it therefore became
16 necessary to regulate imports and establish control of
17 the industry. Nowhere in his speech does it appear
18 that the purpose of the bill was otherwise than as
19 stated. This law was described by the witness YOSHINO
20 as being enacted to insure a six months' supply of oil
21 and there was no reason given that it was for military
22 purposes. On the contrary, it was for the use of domes-
23 tic industries. It also created competition between
24

25 (61. b. Ex. 2769, T. 24936)
(62. a. Ex. 2777-A, T. 24998-25000)

1 Russian, Netherlands, United States and British oil
2 companies, and the bill was based on the example of
3 French legislation. The costs for increasing the sup-
4 ply to six months were borne by the government. If
5 there had been any military purposes in connection with
6 the bill the costs would have been charged to Army and
7 Navy expenditures.^{b.}

8 63. The Synthetic Oil Industry Bill and the
9 Imperial Fuel Development Company Bill were introduced
10 on July 29, 1937. It was stated that Japan was very
11 poor in oil resources, that large sums of money were
12 being spent by Japan and the demand for oil was increas-
13 ing. Self-sufficiency was set forth as the object of
14 these bills.^{a.} OKADA testified that Japan was completely
15 lacking in storage of oil until the outbreak of the
16 China Incident. After it commenced American crude oil
17 was bought and a minimum of aviation oil was secured
18 for the Army. This was the first occasion of the Army's
19 storage of oil. At that time Japan, as a whole, was
20 woefully lacking in oil and the amount obtained was
21 barely sufficient to satisfy the needs of the Army's
22 air power for a year, even if civilian oil was added
23 to that of the Army.^{b.}

24
25 (62. b. T. 18215-17)
(63. a. Ex. 2781-A, T. 25013
b. T. 24855-6)

1 64. The prosecution refers to the planned
2 increase of the Petroleum Industry which it admits
3 was not adopted until 1939. Its argument that the
4 laws which were passed in 1934 and 1935 for the purpose
5 of carrying out the plan of 1939 is of course untenable.
6 It also comments on the fact that a rationing system
7 was effectuated to curtail civilian and government use
8 of oil in March 1938.^a In view of the fact that hos-
9 tilities with China were in progress at that time this
10 curtailment was not unusual. As a matter of fact,
11 rationing was practiced by other countries even before
12 they got into the war.
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1 65. The impression that oil was required
2 in Japan solely for the use of the army and navy was
3 dissipated by the testimony of Mr. OKAZAKI whom the
4 prosecution failed to cross-examine.^{a.} He testified
5 that in 1931 the army and navy consumed 36,000
6 kilolitres of diesel oil while the civilian consump-
7 tion was 1,240,000 kilolitres and that this proportion
8 continued from that time up until the outbreak of the
9 Pacific War. Civilian consumption in 1941 was
10 1,066,150 kilolitres. This drop in civilian con-
11 sumption was also accounted for by the drop in impor-
12 tation from 1,346,000 kilolitres in 1940 to
13 465,000 kilolitres in 1941 because of the embargoes.
14 With respect to fuel oil he pointed out that the volume
15 of naval consumption increased after 1931. This was
16 due to the fact that coal burning boilers on vessels
17 were gradually changed to fuel oil burning boilers.
18 The annual consumption of fuel oil in 1941 was
19 1,367,360 kilos.
20

21 66. It is interesting to note that although
22 Liebert freely expressed opinions and conclusions
23 with respect to many industries he voluntarily stated
24 on direct examination that there was tremendous
25 stockpiling of reserve oil for some purpose or
65. a. Ex. 2782, T. 25020.

1 in "Peace and War": "Practically all realistic
2 authorities have been agreed that imposition of sub-
3 stantial economic sanctions or embargoes against any
4 strong country unless that imposition be backed by a
5 show of superior force, involves serious risk of war."
6 The President and heads of the Army and Navy and Depart-
7 ment of State were in constant consultation through
8 this period regarding all the aspects of the diplomatic
9 and military situation. b.

10 89. A letter from Admiral Stark to the Hon-
11 orable Sumner Welles, dated July 22, 1941, reveals that
12 the President had previously asked Admiral Stark for
13 his reaction to an embargo on a number of articles to
14 Japan and he had told the President that he had
15 expressed the same thought to the President as he had
16 expressed to Sumner Welles and Mr. Hull regarding the
17 cil. He also advised that he was having the War Plans
18 Division make a quick study, which was finished
19 on July 21; a copy of which he had sent to the President
20 who expressed himself as pleased with it and asked
21 Admiral Stark to send a copy to Mr. Hull. a. This study
22 which is dated July 19, 1941, sets forth as its purpose
23 the determination of the effect which would be produced
24

25 88. b. Ex. 2833-A, T. 25,340.
89. a. Ex. 2833-A, T. 25,341.

1 by enforcement of an absolute or partial embargo on
2 trade between the United States and Japan. It shows
3 that export to Japan in 1940 declined \$5,000,000 from
4 1939 and \$13,000,000 from 1938 but during the first ten
5 months of 1940 the value of exports increased due to
6 higher commodity prices and Japan's increased demand
7 for American products as a result of inability to pur-
8 chase from Europe. Sharp recessions were noted during
9 the last two months of 1940 as a result in part of
10 application of export license controls.^{b.} In November
11 and December 1940 declines were registered in machine
12 tools, ferro-alloys and refined copper while scrap iron
13 exports were practically negligible. United States
14 exports to Japan during the first five months of 1941
15 were \$44,000,000 less than for the same period of 1940.
16 Trade declined from \$11,000,000 in January to
17 \$6,000,000 in May 1941. Iron and steel products and
18 metal working machinery which amounted to \$67,000,000
19 in 1940 virtually disappeared in 1941 as a direct
20 result of the embargo.^{c.} American raw cotton purchased
21 by Japan dropped from \$42,000,000 in 1939 to
22 \$29,000,000 in 1940 due to the quantity of piece goods
23 on hand in Japan, the high price of the American cotton
24

25 89. b. Ex. 2833-A, T. 25,342, 25,343.

c. Ex. 2833-A, T. 25,344.

1 compared to that of India and of Latin America and
2 shipping requirements for other items.

3 90. Declines in other items including auto-
4 mobiles was due to the decline of purchasing power in
5 Japan and Japanese restrictions on importation of these
6 items. Imports from Japan to the United States were
7 practically the same for 1939 and 1940 and for the first
8 four months of 1941 imports declined only \$8,000,000
9 for the same period in 1940 as compared with the
10 decline in American exports of \$37,000,000.^{3.}

11 91. The report further states: "It is
12 generally believed that shutting off the American supply
13 of petroleum will lead promptly to an invasion of
14 the Netherlands East Indies. While probable, this is
15 not necessarily a sure and immediate result. * * *
16 Furthermore, Japan has oil stocks for about eighteen
17 months war operation. Export restrictions of oil by
18 the United States should be accompanied by similar
19 restrictions by the British and Dutch. * * * Further-
20 more, it seems certain that, if Japan should then take
21 military measures against the British and Dutch, she
22 would also include military action against the Philip-
23 pines, which would immediately involve us in a Pacific
24 War."
25

90. Ex. 2833-A, T. 25,345.

1 92. The report ends with a recommendation
2 that trade with Japan be not embargoed at this time.
3 R. K. TURNER. "(Written in longhand:) I concur in
4 general. Is this the kind of picture you wanted.
5 H.R.S."

6 THE PRESIDENT: We will adjourn until half-
7 past one.

8 (Wherupon, at 1200, a recess was
9 taken.)

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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

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THE PRESIDENT: Mr. Logan.

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MR. LOGAN: If the Tribunal please, I will
continue reading, paragraph 93, page 81.

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93. Cordell Hull testified before the Joint
Congressional Committee on the Investigation of the
Pearl Harbor Attack that on July 26, 1939 when the
United States notified the Japanese Government of its
desire to terminate the Treaty of Commerce and Navigation
of 1911, it was felt that the Treaty was not affording
adequate protection to American commerce while at the
same time the operation of the most-favored-nation clause
of the treaty was a bar to the adoption of retaliatory
measures against Japanese commerce. Further that the
termination of the treaty on January 26, 1940 removed
the legal obstacle to the United States placing
restrictions upon trade with Japan; that moral embargoes
were begun by the United States in 1938 and after
the Act of July 2, 1940, the restrictions imposed were
intended also as deterrents and expressions of United
States opposition to Japan's actions. He further stated

1 that the decision of the United States to enter into
2 the conversations with the Japanese was in line with
3 the need of the United States to rearm for self defense.
4 He further pointed out that the freezing order of
5 July 26, 1941 brought under the control of the government
6 all financial and import and export trade transactions
7 in which Chinese or Japanese interests were involved.
8 The effect was to bring about a virtual cessation of
9 trade between the United States and Japan.^{a.}

10 94. The terrific impact of the freezing orders
11 on the civilian life of Japan has been amply demonstrated
12 by the evidence. A large number of trades, industries,
13 and commodities whose very existence depended upon the
14 importation of raw materials and the exportation of
15 finished products unrelated to the production of military
16 goods were immediately affected. Some of these were as
17 follows: Cement, aluminum, lead, copper, coal, rice,
18 pottery, toys, glass and glassware, menthol, tea, soy
19 beans, phosphate rock, fats, oil and oil bearing materials,
20 hides and skin, tanning materials, leather and leather
21 manufactures, potassium salts, wheat and wheat flour,
22 zinc, sugar, lumber, textile machinery, sulphur and
23 sulphuric acid, wool and wool manufactures, marine
24 products, soda, ash and caustic soda, chemical nitrogen,
25
(93. a. Ex. 2840, T. 25,808.)

1 rayon yarn and staple fibre, bicycles, electrical
 2 equipment, silk fabrics, cotton textiles, rubber and
 3 rubber manufactures, rayon fabrics, and raw cotton.^{a.}
 4 The evidence further discloses that the freezing orders
 5 affected such basic commodities as rice, fodder, cattle,
 6 sugar, fertilizers, salt and so forth.^{b.} Its textile
 7 industries including such materials as cotton, wool,
 8 silk and rayon upon which many of the civilian population
 9 depended for a living were practically brought to a
 10 standstill.^{c.}

11 95. Diversified commodities which the Japanese
 12 shipping industry carried to various parts of the globe
 13 virtually ceased as a result of the freezing orders.^{a.}
 14 The extent of Japan's imports and exports affected by
 15 kinds, by countries, and by political units has been
 16 graphically presented to the Tribunal.^{b.} We might
 17 mention here incidentally that the prosecution's con-
 18 tention that foreign trade with Manchukuo practically
 19 ceased after the State was established is unfounded when
 20 it is noted that in 1936 almost 2000 foreign ships with
 21 a total tonnage of approximately 5 million tons entered
 22 Dairen.^{c.}

24 (94. a. Ex. 3714, T. 36968; Defense Document 500A-1 -
 500A-37.

25 b. Ex. 3710-A, T. 36966. c. Ex. 3712-A, T. 36968.

95. a. Ex. 3711-A, T. 36967. b. Ex. 2766-A, Ex. 2766-B

c. Ex. 3713-A, T. 36968.)

96. As early as July 2, 1941, the United
1 States Department of State had arrived at a conclusion
2 that "* * *the freezing of Japanese funds in the United
3 States could be expected in the near future."^{a.} This
4 negates any prosecution claim that the freezing was in
5 retaliation for the advance into Indo-China. Even if it
6 were in retaliation, an examination of the facts demon-
7 strates unquestionably that such retaliation was not
8 justified.

97. On August 14, 1941, the United States
10 Office of Naval Operations sent a top secret dispatch to
11 the commanders in the Pacific in which was recited a
12 curtailment of Japanese trade and shipping as a direct
13 result of the United States-British-Dutch interference
14 and partially through refusal of transit of the Panama
15 Canal, export control decisions, refusal of bunkering
16 and port facilities and fund freezing.^{a.}

98. The evidence shows that indignation was
19 running so high in Japan as a result of the progressive
20 steps taken by America including the freezing order that
21 Prince KONOYE took the initiative in a conciliatory move
22 and Ambassador NOMURA had so advised the President by the
23 delivery of a communique from Prime Minister KONOYE. It
24 was about this time that the announcement was made that

25 (96. a. Ex. 2880, T. 25739.
97. a. Ex. 2854, T. 25576.)

oil was being sent to the Soviet Union and a decision
 1 made to send a military commission headed by General
 2 Magruder to Chiang Kai-shek.^{a.} The situation was becom-
 3 ing so tense that General ISODA pointed out to Brigadier
 4 General Sherman Miles "Japan has her back to the wall.
 5 She can be pushed just so far, then will have to fight
 6 us to save her national honor and integrity though war
 7 with the United States is the last thing desired by
 8 Japan." General Miles also stated in the memorandum he
 9 submitted to the United States Chief of Staff: "General
 10 ISODA's visit clearly parallels conversations now in
 11 progress between the Japanese Ambassador and the State
 12 Department."^{b.}

14 99. The prosecution has conceded that the
 15 report of the United States Tariff Commission in
 16 September, 1941, showed that the United States would be
 17 affected not at all by the cessation of imports from
 18 Japan.^{a.} On October 9, 1941, a request was made of
 19 Congress to amend the Neutrality Act to permit the
 20 United States vessels to rearm and carry cargoes to
 21 belligerent ports anywhere. This was approved on
 22 November 17, 1941.^{b.}

24 100. In order to avoid war notwithstanding the
 25 (98. a. Ex. 2835, T. 25360, 25363.
 b. Ex. 2856, T. 25585, 25587.
 99. a. T. 25083-25085.
 b. Ex. 2839, T. 25395.)

economic blockage, investigations were made with respect
1 to the possibility of the production of synthetic oil in
2 Japan. It was found to be impossible from a practical
3 standpoint due to the lack of steel pressure pipes,
4 coal, and cobalt.^{a.} A further study was made in October,
5 1941, after the TOJO Cabinet was formed and it was thought
6 that war could be avoided by an expansion of the oil
7 industry, and when War Minister TOJO was told it was im-
8 possible, he ordered a more fundamental investigation on
9 October 29, 1941. After that, even the Planning Board
10 reached the conclusion that such a plan was impossible.
11 Its assumptions and conclusions were submitted to the
12 Imperial Conference on November 5, 1941.^{b.}

14 101. Investigations were also made with
15 respect to shipping if war started. Due to loss of
16 tonnage, inability to obtain coal or iron and the con-
17 sumption of materials on hand, it was felt that Japan's
18 resiliency would be questionable.^{a.} The total amount of
19 oil stocked by the Army, Navy and civilian population
20 showed that Japan, if provoked to war would only be able
21 to continue fully for one year in the air against a
22 strong power and for one year of operations at sea. The
23 assumptions and conclusions with regard to the shipping
24 (100. a. T. 24870.
25 b. T. 24861, 24863.
101. a. T. 24870.)

1 industry show that there was a successful lack of shipping
2 to carry on any protracted war.

3 102. That the Japanese were led to wonder about
4 the degree of sincerity of the American Government was
5 set forth in a memorandum from Ambassador Grew dated
6 November 10, 1941. He stated that the Japanese Minister
7 had complained that Japan needed raw materials for its
8 existence and that unless the American Government
9 realized this fact successful conclusions to the conver-
10 sations would be difficult. He pointed out that for more
11 than six months the Japanese Government had made pro-
12 posals calculated to approach the American point of view
13 but that the American Government had yielded nothing.^{a.}

14 103. The foregoing abundantly demonstrates that
15 on the facts and the law as pronounced by Secretary
16 Kellogg and this Tribunal, Japan was justified in
17 attacking, as its trade, vital to its very existence,
18 was blockaded. It is to be noted that the evidence in
19 support of this conclusion is not only from Japanese
20 sources, but is derived from statements made by due
21 representatives of the Western Powers at the time of the
22 occurrence of the blockade. In addition to the economic
23 evidence reviewed we shall now proceed to summarize the
24 facts regarding the military encirclement threat which
25 (102. A. Ex. 2838, T. 25394.)

also played a major role in Japan's decision to fight.

1 MILITARY ACTION AGAINST JAPAN

2 104. Hand in hand with the expressed policy of
3 economic strangulation of Japan, the Western Powers took
4 more forceful and drastic action to enforce their policy
5 with military might. Can the prosecution rightfully con-
6 tend that by furnishing men and materials of war to
7 China, and the consequent spilling of Japanese blood on
8 Chinese soil, there was no aggression against Japan? Let
9 us examine the evidence and see if Japan had just cause
10 to react against the military ring being forged around
11 her. The facts amply demonstrate she had just provo-
12 cation to strike in self-defense.
13

14 105. As early as 1933 the United States allo-
15 cated funds for the purpose of constructing and equipping
16 32 naval vessels.^{a.} Next year the Vinson Naval Bill was
17 authorized for construction of ships up to the limits of
18 the Washington and London Naval Treaties.^{b.} In April,
19 1935, the United States War Department Appropriation Act
20 authorized an increase in the Army to 165,000 enlisted
21 men.^{c.}
22

23 106. While Japan was endeavoring to work out
24 its economic difficulties through legislation, Admiral

25 (105. a. Ex. 2842, T. 25435.
b. Ex. 2842, T. 25435.
c. Ex. 2842, T. 25435.)

1 R. E. Ingersoll went to London in December, 1937, The
2 primary purpose of his visit was to investigate and talk
3 with the British Admiralty on figures regarding command
4 relationships, communications, liaison, codes, ciphers
5 and so forth. These conversations were based on the
6 assumption that the United States and Great Britain
7 might find themselves at war with Japan in the Pacific.
8 He readily admitted before the Pearl Harbor Investi-
9 gation Committee that his purpose in going there was
10 "to work out a tentative plan as to how each nation
11 would co-operate with the other in the event that (war)
12 should occur." The report of these conferences remained
13 effective until later agreements A-B-C-1 became effec-
14 tive in 1940 or 1941.^{a.} Admiral Stark, in his testi-
15 mony before the same committee, corroborated this visit.^b

17 107. On January 28, 1938, it was recommended
18 to the Congress of the United States that the United
19 States national defense should be strengthened and not
20 limited to one ocean and one coast. Substantial in-
21 creases were asked in military and naval armaments.
22 Suspicion was voiced in Congress that the naval in-
23 creases were based on an agreement for naval co-
24 operation with some other power such as Great Britain
25 which was denied by Secretary Hull in a letter to a

(106. a. Ex. 2844-A, T. 25448, 25449.

b. Ex. 2849-A, T. 25532.)

1 member of Congress on February 10, 1938. The proposals
2 for military and naval rearmament were substantially
3 adopted by the Congress.^{a.}

4 108. In 1939 the United States proceeded to
5 extend preparations beyond continental America and the
6 location of the military strategic sites being fortified
7 left no doubt that they were aimed at Japan. "Peace and
8 War" reveals that on January 12, 1939, President
9 Roosevelt, in a special message to Congress, asked for an
10 appropriation of more than a half billion dollars for
11 military equipment, particularly military and naval
12 aircraft to strengthen the air defense of continental
13 United States, Alaska, Hawaii, Puerto Rico, and the
14 Canal Zone. He also recommended training additional air
15 pilots and steps be taken for quantity production of war
16 materials. These recommendations were substantially
17 enacted into law.^{a.}

18 109. In a letter of October 21, 1938, to the
19 President, Secretary Hull pointed out the necessity of
20 obtaining sufficient supplies of raw materials to be
21 used in the event of a general war. Steps were initiated
22 to make such supplies available when the recommendation
23 of the Secretary of State was enacted into law on June 7,
24 1939, and \$100,000,000 was appropriated for securing
25

(107. a. Ex. 2843, T. 25442.

~~108. a. Ex. 2845, T. 25451.)~~

1 stock piles of strategic materials for industrial,
2 military, and naval needs. As the result of an agree-
3 ment between United States and Great Britain dated June
4 23, 1939, 100,000 tons of rubber were brought into the
5 United States in exchange for cotton.^{a.}

6 110. It was in January, 1940, that the Presi-
7 dent of the United States asked for a further appropri-
8 ation of \$1,800,000,000. In May, 1940, the American
9 fleet was advanced to Hawaii and based there as a threat
10 to Japan.^{a.} In the same month further appropriations in
11 Congress were requested. In his address to Congress on
12 May 16, 1940, President Roosevelt stated that he would
13 like to see the United States "geared up to the ability
14 to turn out at least 50,000 planes a year." He requested
15 one billion dollars appropriation for Army and Navy
16 equipment. On May 31, 1940, an additional request for
17 appropriations of over a million dollars was asked to-
18 gether with authority to call the National Guard and
19 necessary reserve personnel into military service.
20 Congress appropriated the money together with the
21 President's request of July 10, 1940, for five billion
22 dollars more for the rearmament program. His request to
23 call the National Guard and reserve personnel into active
24 military service was also approved by Congress on August
25

(109. a. Ex. 2845, T. 25452.

110. a. Ex. 2800-A, T. 25168, 25169.)

1 27, 1940. It is significant to note that the legis-
2 lation provided that such personnel could be used in the
3 territories and possessions of the United States includ-
4 ing the Philippine Islands.^{b.} In January, 1941, the
5 United States budget called for an additional appropri-
6 ation of eleven billion dollars, thus raising to twenty
7 eight billion dollars the outlay for military purposes
8 since May, 1940.^{c.}

9 111. The United States Lend-Lease Bill became
10 law on March 11, 1941, and seven billion dollars was
11 appropriated to accomplish the objectives of the bill.
12 The avowed purpose was the establishment of a policy for
13 unqualified and immediate all-out aid to certain
14 countries including China.^{a.}

15 112. Admiral Stark testified in the Pearl
16 Harbor Attack Investigation that in 1940 he had requested
17 the British Government to send naval experts to the
18 United States to discuss the possibility of naval co-
19 operation. The meetings were held in 1941 and completed
20 in March, 1941. He stated that he had requested the
21 meeting on his own responsibility and informed the
22 President that he had done it. This commission from
23 Great Britain arrived in the United States in civilian
24

25 (110. b. Ex. 2846, T. 25469.
c. Ex. 2847, T. 25493.
111. a. Ex. 2848, T. 25495, 25499.)

1 a.
2 clothes.

3 113. The next step aimed at Japan was the
4 Most Secret American-Dutch-British Conversations held
5 in Singapore in April, 1941. The report of these
6 conversations states: "It is important to organize air
7 operations against Japanese occupied territory and
8 against Japan herself. It is probable that her collapse
9 will occur as a result of economic blockade, naval
10 pressure and air bombardment." It also referred to the
11 offensive value of Luzon for submarine and air force
12 operations and recommended that every effort should be
13 made to maintain a bombing force there as well as build-
14 ing up a similar force in China and also points out
15 under the heading of "Plan for Employment of Land and
16 Air Forces" that "The operating of Chinese Guerrilla
17 Forces armed, equipped and directed by the Associated
18 Powers. Steps have already been taken by the British
19 Government to organize such operations. It is recom-
20 mended that the United States Government organize
21 similar guerrilla forces." The Report further states:
22 "The organization of subversive activities in Japan and
23 occupied territories. Activities of this kind are al-
24 ready being organized by the British Government. It is
25 recommended that the United States should also undertake

(112. a. Ex. 2849-A, T. 25532-25534.)

1 such activities and co-ordinate them closely with the
2 British."^{a.}

3 114. On May 27, 1941, President Roosevelt
4 proclaimed the existence of an unlimited National Emerg-
5 ency and he also stated that the program of the United
6 States had given it time to build more guns, and tanks
7 and planes and ships. At that time, he also made the
8 significant pronouncement that "We in the Americas would
9 decide for ourselves whether and when and where our
10 American interests were attacked or our security
11 threatened."^{a.} This was not an idle statement. It is
12 submitted that if the United States contended it had the
13 right to determine for itself when its security was
14 threatened, the same rule should apply with respect to
15 Japan.

16 115. A memorandum was sent from Laughlin Curry
17 to President Roosevelt, May 9, 1941, regarding an air-
18 craft program for China in which he informed the
19 President that he had worked out a tentative program
20 for the balance of the year and pointed out the import-
21 ance of establishing a Chinese air force in China and
22 the psychological importance
23

24
25 (113. a. Ex. 2851-A, T. 25547, 25548, 25550.
114. a. Ex. 2852, T. 25560.)

of such a program to the Chinese. Attached to
1 the memorandum was the tentative program which
2 included the supplying of 244 pursuit ships, 122
3 bombers, 340 trainers and 22 transport planes.
4 The schedule provided for increased amounts from
5 May to December, 1941, and for the first six
6 months of 1942. The President answered this note
7 under date of May 15, 1941, stating that it was
8 all right to go ahead and negotiate but that he
9 did not want to imply that he was at that time in
10 favor of the proposals. He suggested that it
11 could only be worked out in relationship to the
12 whole military problem and should be taken up with
13 General Burns and General Arnold.^{a.}
14

15 116. On July 5, 1941, Ambassador NOMURA re-
16 lated to United States State Department officials
17 Japan's concern over the threat to it from the ABCD
18 encirclement. He observed that the reports were
19 that America was aiding Chiang Kai-shek in various
20 ways including the dispatch of American pilots to
21 Chungking. American supplies were being sent to
22 Malaya and Netherlands East Indies. There were
23 visits of American squadrons to Australia which
24
25 (115. a. Ex. 2850-A, T. 25536.)

to a naval man like himself were of greater significance
1 than mere courtesy visits. And also prospects of American
2 aid to the Russian Far East and acquisition of American
3 air bases in Siberia.^{a.}

4 117. That Japan knew of and feared the military
5 encirclement appears from the fact that also on July 20,
6 1941, Ambassador NOMURA in a conversation recorded by
7 Admiral Turner complained about the aid the United
8 States was providing China and pointed out that if China
9 was left without industrial and military support, the
10 Chungking regime would be unable to continue the
11 present incident and Japan would then be able to with-
12 draw from the greater part of China. He also pointed
13 out that the United States was improving the Burma Road
14 and was supplying airplanes and pilots to be sent to
15 Chungking and that the pilots were being supplied from
16 the Armed Forces of the United States. He also stated
17 that the British were contributing more and more to
18 measures sustaining the Chungking regime. He also dis-
19 closed that within the next few days Japan expected to
20 occupy French Indo-China that this occupation has become
21 essential for Japan's security against a possible attack
22 from the South and for better control over the activities
23 of Chungking. He also expressed apprehension that the
24
25 (116. a. T. 25733.)

1 United States would take further action against Japan
2 either economically or militarily as soon as Japan's
3 troops were known to be occupying French Indo-China.^{a.}

4 118. Throughout this period the United States
5 increasingly followed a policy of extending all assist-
6 ance to China. Among the forms of assistance were loans
7 and credits aggregating some two hundred million dollars
8 and later lend-lease and military supplies were sent to
9 be used in China's resistance against Japan.^{a.}

10 119. The Japanese proposal of August 6, 1941,
11 was in addition to the withdrawal of troops from French
12 Indo-China that the United States should undertake to
13 "suspend its military measures in the Southwestern Pacific
14 areas and to recommend similar action to the Governments
15 of the Netherlands and Great Britain* * *."^{a.} This
16 further demonstrates Japan's knowledge of the military
17 activities in the Pacific and its apprehension of an
18 attack.

19 120. In August, 1941, the problem of supplying
20 the munitions of war as provided in the Lend-Lease Act
21 to belligerent countries was one of the topics discussed
22 by President Roosevelt and Prime Minister Churchill when
23 they met at sea.^{a.} It was also in this month of August,
24

25 (117. a. Ex. 2825, T. 25308, 25309.
118. a. Ex. 2840, T. 25408.
119. a. Ex. 2840, T. 25411, 25412.
120. a. Ex. 2854, T. 25576.)

1 1941, that the results of the conference held at Singa-
2 pore on April 19, 1941, had been revised and the A-D-B-2
3 Plan was evolved.^{b.}

4 121. In November, 1941, negotiations between
5 representatives of the United States and Great Britain
6 were stepped up upon the arrival of Admiral Philipps in
7 Manila.^{a.} On November 23rd large United States Army
8 troop movements were scheduled to depart from San
9 Francisco involving 22 vessels, which included large
10 liners, to assemble at Honolulu.^{b.} On November 26, 1941,
11 a secret message from the United States War Department
12 to General Short in Hawaii reveals a request that the
13 United States pilots be instructed to photograph Truk
14 Island in the Caroline Group and Jaluit in the Marshall
15 Group and that a visual reconnaissance be made immediately.
16 Port Moresby, on the Australian mandated island was to
17 be used. The object of this special photo mission was
18 to obtain information with respect to naval vessels,
19 air fields, aircraft, guns, barracks, and camps. The
20 planes were to be fully equipped with guns and ammunition.
21 The crews were instructed to use means for self preserv-
22 ation if attacked.^{c.}

24 122. On November 27th the Chief of Naval

25 (120. b. Ex. 2853-A, T. 25565.
121. a. Ex. 2853-A, T. 25565, 25566.
b. Ex. 2857, T. 25605.
c. Ex. 2858, T. 25608.)

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17 be used. The object of this special photo mission was
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19 air fields, aircraft, guns, barracks, and camps. The
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121. a. Ex. 2853-A, T. 25565, 25566.
b. Ex. 2857, T. 25605.
c. Ex. 2858, T. 25608.)

1 Operations, Admiral Stark, and the Army Chief of Staff,
2 General Marshall, prepared a memorandum for the Presi-
3 dent advising him that considerable Army and Navy rein-
4 forcements had been rushed to the Philippines and that
5 "ground forces to a total of 21,000 are due to sail from
6 the United States by December 8, 1941."^{a.} Apparently
7 realizing that the economic blockade had proven effective
8 and that Japan was at last being provoked into war a
9 message was sent from the United States War Department on
10 November 27, 1941, stating that "negotiations with Japan
11 appear to be terminated to all practical purposes, with
12 only the barest possibility that the Japanese Government
13 might come back and offer to continue. Japan's future
14 action unpredictable but hostile action possible at any
15 moment. If hostilities cannot repeat cannot be avoided,
16 the United States desires that Japan commit the first
17 overt act."^{b.} Practically identical messages were sent
18 to Hawaii, a dispatch was sent from General Marshall to
19 General MacArthur in the Philippines, and similar
20 messages were sent out by the Navy.^{c.}
21
22
23
24

25 (122. a. Ex. 2859, T. 25613.
b. Ex. 2860, T. 25620.
c. Ex. 2861, Ex. 2862, T. 25621, 25622.)

1 123. That the Hull Note of November 26,
2 1941 was intended as a final ultimatum is fully
3 understood from the memorandum of General Gerow
4 of November 27, 1941. It reveals that he had
5 attended a conference, apparently on November 27,
6 1941, with the Secretary of War, Secretary of
7 Navy and Admiral Stark. The Secretaries were
8 informed of a proposed memo which the Chief of
9 Staff and Admiral Stark directed be prepared for
10 the President. "The Secretary of War wanted to
11 be sure that the memo would not be construed as
12 a recommendation to the President that he request
13 Japan to reopen the conversations. He
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1 was reassured on that point."^a. In view of the
2 foregoing, one wonders if the final message of
3 President Roosevelt of December 7, 1941 was sent
4 merely to keep the record straight, and with no
5 desire to accomplish anything.

6 124. Under instruction of the Japanese
7 Government, the Japanese Ambassador in Washington,
8 NOMURA, represented to the United States Government
9 on 3 December 1941 among many other things, that "the
10 United States, British and other countries have in-
11 creasingly of late intensified their military prepara-
12 tions against Japan and adopted a provocative attitude
13 toward us. On the 20th of last month (November), for
14 instance, an American plane made a reconnaissance
15 flight over Garambi in the south of Formosa. This is
16 not an isolated case of such American and British
17 actions. It is our desire in view of the delicate
18 situation that they should themselves refrain from
19 repeating such actions."^a.

20
21 125. The prosecution has endeavored to show
22 an elaborate spy system employed by Japan, reporting
23 all types of information to Japan officials. If the

24 123.

a. Ex. 2863, T. 25624.

25 124.

a. Ex. 2951, T. 26059-26061.

Tribunal so finds, then it naturally follows that the
1 Japanese were informed of the various military steps
2 hereinbefore recited. It cannot be questioned that
3 many of them, such as public messages to Congress,
4 enactment of laws, etc., were well known to the
5 Japanese. The testimony of various accused reveals
6 knowledge and subsequent action on their part based
7 on such knowledge. Japanese newspaper reports reveal-
8 ing some of the Allied actions were not permitted in
9 evidence -- particularly the 1900 series.^{a.}
10

11 126. In the light of the foregoing can it be
12 said that Japan had no reason for apprehension and
13 that she was not justified in advancing into the
14 southern part of French Indo-China and in attacking D
15 the United States and Great Britain on December 8,
16 1941? :

17 127. Before moving into the southern part
18 of French Indo-China, the Japanese Government well
19 knew at that time and reacted to the positive actions
20 which had been committed against her up to that time
21 by the Western powers. She knew; the American Navy
22 had been retained in Hawaii as a threat since May
23 1940;^{a.} various appropriations had been made by the
24

25 125.
a. T. 25481, etc.

127.
a. T. 36274.

1 United States for military expansion and the United
 2 States Navy increased;^{b.} Secretary Hull had opposed
 3 the British prohibition of aid to Chiang over the
 4 Burma Road in July 1940;^{c.} Admiral Yarnell had advocated
 5 on July 8, 1940, a strong policy against Japan;^{d.} the
 6 creation of the 13th Naval District in Alaska in
 7 August 1940;^{e.} public announcement of the details of
 8 the eight million dollar naval construction budget
 9 for American territories in the Pacific in September
 10 1940;^{f.} the United States statement of policy in
 11 September 1940 for the construction of a two-ocean
 12 fleet and reinforcement of the air force;^{g.} the
 13 pronouncement in October 1940 by Secretary of Navy
 14 Knox that America was ready to meet the challenge of
 15 the Tripartite Alliance;^{h.} the recommendation of the
 16 evacuation of women and children in East Asia in
 17 October 1940;^{i.} the one hundred million dollar loan
 18 to the Chungking Regime in November 1940; the estab-
 19 lishment of the Pan-American Airlines between Manila
 20 and Singapore in the same month;^{k.} Foreign Secretary
 21 Eden's pronouncement in the House of Commons on
 22

23 127.

24 b. T. 36274
 c. T. 36245.
 25 d. T. 36247.
 e. T. 36246.
 f. T. 36246.

g. T. 36247.
 h. T. 36247.
 i. T. 36248.
 j. T. 36248.
 k. T. 36246.

1 non-cooperation with Japan;^{l.} broadcast by President
 2 Roosevelt on December 29, 1940 that America would be
 3 an arsenal of democracy for the purpose of combatting
 4 the Tripartite Alliance;^{m.} Secretary Morgenthau's
 5 speech that America was prepared to extend Lend-Lease
 6 to Chungking and to Greece on December 30, 1940;^{n.}
 7 the various conferences between military representa-
 8 tives of the United States, Britain and the Nether-
 9 lands' Army and Navy in Singapore and Manila in
 10 October 1940 and April 1941;^{o.} the announcement of
 11 Secretary Knox in February 1941 that the Chungking
 12 Government had completed an agreement for the purchase
 13 of 200 American planes; the dispatch by the United
 14 States of naval advisors and military observers to
 15 Australia, South East Asia, Thailand, Singapore and
 16 the Dutch East Indies in February 1941;^{q.} guidance by
 17 Great Britain to the Chinese guerilla forces in March
 18 and May 1941;^{r.} the visits of the United States Fleet
 19 to New Zealand and Australia in March 1941;^{s.} the
 20 signing of the British-Chinese Military Agreement
 21 including British aid to China and joint defense plans
 22
 23 127.

24 l. T. 36248.

m. T. 36245.

25 n. T. 36245.

o. Ex. 3567, T. 34682.

p. T. 36245.

q. Ex. 3566, T. 34677.

r. Ex. 3567, T. 34682.

s. Ex. 3566, T. 34677.

1 for Burma in March 1941;^{t.} the conferences between
 2 representatives from the United States, Great Britain,
 3 and the Netherlands in Manila in April 1941;^{u.}
 4 military preparation of bases in and around the
 5 Pacific areas by the United States, Great Britain,
 6 Australia, New Zealand and the Netherlands in the
 7 early part of 1941;^{v.} the arrival of Brigadier General
 8 Claggett at Chungking in May 1941 for the purpose of
 9 assisting Chiang's army;^{w.} the British-Chinese confer-
 10 ence in Singapore in May 1941;^{x.} and the strengthening
 11 of the anti-Japanese encirclement front with Manila
 12 and Singapore as its pivotal points was being under-
 13 taken. This evidence has not been disputed, nor were
 14 the witnesses cross-examined on it.

15 128. On July 21, 1941 an understanding of
 16 mutual defense was reached between the Japanese and
 17 French Governments and a formal exchange of notes
 18 took place. The next day pursuant thereto Japan dis-
 19 patched her armed forces to the southern part of
 20 French Indo-China. On July 29, 1941 the protocol
 21 between Japan and France for the joint defense of
 22 French Indo-China was formally signed. Meanwhile the
 23

24 127.

t. Ex. 3567, T. 34682.

u. Ex. 3566, T. 34677.

v. Ex. 3566, T. 34677.

w. T. 36245.

x. Ex. 3567, T. 34682.

128.

a. Ex. 651;

T. 36251, 36252.

25

1 general economic rupture of July 26, 1941 occurred
2 on the pretext that the advance of Japanese forces
3 into the southern part of French Indo-China was harm-
4 ful to American national defense and American inter-
5 ests. But was this pretext justified?

6 129. Prior to this on August 30, 1940,
7 Japan and France had entered into an understanding in
8 which Japan had assured France of its respect for her
9 rights and interests in East Asia, especially the
10 territorial integrity of French Indo-China and her
11 sovereignty over the whole of the said union.^a The
12 Agreement was concluded on September 22, 1940. At that
13 time neither the United States nor Great Britain took
14 any action on the ground it was harmful to American
15 national defense or American interests. It is not
16 unreasonable to suppose that at that time the military
17 encircling ring against Japan was not yet so strength-
18 ened as might enable them to take such an attitude.

19 130. We cannot but wonder how the Franco-
20 Japanese Protocol of July 29, 1941 and the advance of
21 Japanese forces into the southern part of French Indo-
22 China could constitute a menace to the national
23 defense or interests of either the United States or
24
25 129.

a. Ex. 620, T. 36200.

1 Great Britain. The national policy on the part of
2 Japan had been clearly laid down on the above men-
3 tioned agreement of September 22, 1940. The preamble
4 of the treaty relative to the maintenance of friendly
5 relations and mutual respect for territorial integrity
6 which Japan had concluded with Thailand on June 12,
7 1940 of the same year also had declared that the two
8 countries entered into the treaty because they were
9 convinced that the peace and the stability of East
10 Asia was their common concern. It was indeed because
11 of the peace and tranquility in French Indo-China
12 and Thailand which had the greatest influence upon
13 the destiny of Japan that she offered to mediate the
14 armed border dispute between Thailand and French Indo-
15 China. The Peace Treaty of 1942 was concluded as a
16 result of this successful mediation.^{a.}

17
18 131. What are the contents of the Protocol
19 of July 29, 1941, which caused such a grave inter-
20 national issue? An examination of its text discloses
21 no reason why western powers should have considered it
22 menacing. It specifically states: 1) "The two
23 governments promised to cooperate militarily for the
24 130.

25 a. Ex. 647, T. 36625.

131.

a. Ex. 651, T. 7104, 7105.

joint defense of French Indo-China; 2) the measures
1 to be taken for the purpose of this cooperation shall
2 be the object of special arrangements; 3) the above
3 arrangement shall remain effective only as long as
4 the circumstances which constitute the motive for
5 their adoption exist."

6
7 132. Carefully scrutinizing and pondering
8 over it, we cannot but be at a loss to find out how
9 this protocol concluded with the passive object purely
10 for self-defense could constitute a menace to the
11 United States and Great Britain. Therefore so far as
12 the United States and Great Britain harbored no in-
13 tention to menace the security of French Indo-China
14 the Protocol as interpreted was utterly harmless to
15 them. It was after all nothing more than a measure
16 of self-defense for Japan. They reverse the cause and
17 effect who maintain that this self-defensive measure
18 was a menace to the United States and Great Britain.

19
20 133. At the time of the proposed move to
21 French Indo-China, it was stated by the Chief of the
22 First Department of the Navy General Staff that such
23 a step was inevitable because of the effect that the
24 American-Anglo aid to Chiang Kai-shek's regime was
25 having. It was growing increasingly vigorous. The
United States, Great Britain, China and the Netherlands

1 were acting in concert in the creation of the so-
2 called A,B,C,D ring.^{a.} The Japanese Navy, being
3 charged with the primary duty of national defense in
4 the Pacific, had knowledge of the United States,
5 Great Britain and the Netherlands war preparations
6 designed against Japan in July 1941 and it was the
7 belief of the Navy that Japan was steadily being
8 encircled.^{b.}

9 134. The above consideration naturally
10 leads to the conclusion that it was only as a pretext
11 that the United States and Great Britain made the
12 most of the Japanese advance into the southern part
13 of French Indo-China for the freezing of Japanese
14 assets and for the severance of economic relations
15 with Japan. It can safely be said that they raised
16 trouble where there was no cause. Leaving aside for
17 the moment the right or wrong of the advance into the
18 southern part of French Indo-China and the freezing
19 of the assets, it is submitted that the foregoing amply
20 demonstrates that Japan honestly believed that she was
21 being threatened and that it was necessary for her to
22 enter into the Protocol of July 29, 1941, for her own
23 self-defense. After July 26, 1941, conditions became
24
25 133.

a. T. 26911, 26912.

b. T. 26712.

1 more and more unbearable to Japan because of the
2 affirmative actions of the Western Powers heretofore
3 recorded.

4 135. In explaining the perplexing inter-
5 national situation prior to and on 5 November 1941
6 when the Imperial Conference was held, one of the
7 accused succinctly and accurately portrayed the plight
8 of the Japanese as follows: "The Allies had effected
9 an economic encirclement of Japan with a result more
10 telling than we dared admit to the world. We viewed
11 with alarm the increasing armaments of the United
12 States, and could not reason that such military
13 steps were taken in contemplation of war with Germany
14 alone. The American Pacific Fleet had long before
15 moved from its west coast base to Hawaii and there
16 stood as a threat to Japan. The United States policy
17 towards Japan had been strict and unsympathetic,
18 revealing a determination to enforce their demands
19 without compromise. The American military and economic
20 aid to China had aroused the bitterest of feelings
21 among the Japanese people. The Allied Powers had
22 carried on military conferences which were pointedly
23 directed against Japan. It was a tight, tense and
24 trapped feeling that Japan had at that time.^{a.}

25 135.

a. Ex. 3565, T. 34658, 34659, SHIMADA.

1 136. In attaching weight and importance to
2 the claim that Japan was provoked to and did in fact
3 act in self-defense on December 7, 1941, it must be
4 borne in mind that this position of the accused is
5 not an afterthought. The foregoing summary points to
6 the numerous documents written with regard to protests
7 recorded at the time of their occurrence by Japan's
8 responsible representatives against the economic
9 blockade and military encirclement which was being
10 imposed upon her commencing in 1938. Countless pages
11 of testimony have been taken of witnesses who testi-
12 fied to the innumerable cabinet meetings, liaison
13 conferences, meetings of the Senior Statesmen, Privy
14 Council meetings and military discussions -- all
15 centering around the effect the economic blockades
16 and military threats were having and would continue
17 to have unless Japan undertook some measures to
18 alleviate the condition. This she patiently tried to
19 do by diplomatic negotiations and failed. It may be
20 said that these embargoes at first were irritating and
21 as they increased in intensity, frequency and scope
22 they prodded Japan into a state of anxiety and finally
23 with the realization that there was no hope of diplo-
24 matically breaking out of the strangle hold which was
25 being placed around her neck she was provoked into

1 doing that which any other self-respecting nation
2 would have done.' These well-documented facts recorded
3 at the time of their occurrence are summed up in the
4 Imperial Rescript issued on December 8, 1941 that
5 Japan was acting in self-defense.

6 137. Was Japan justified? Did these accused
7 or those of them who were responsible leaders at that
8 time sincerely and honestly believe that Japan's
9 national existence was at stake because of the blockade
10 and the military encirclement? Responsible leaders in
11 America knew it at that time, and believed it.^a A
12 conclusion to the contrary would be in utter dis-
13 regard of the facts. We know of no parallel case in
14 history where an economic blockade accompanied by the
15 display of military might was enforced on such a vast
16 scale with such deliberate, premeditated, and co-
17 ordinated precision and which accomplished its purpose--
18 that of a provocation into the expressed expectation
19 and desire that Japan strike the first blow. Having
20 accomplished the avowed purpose of goading Japan into
21 an attack it would indeed be a black mark in history
22 to record this attack as other than one of self-defense.

23 137.

24 a. Ex. 2833-A, T. 25336, 25340, 25346, 25350;
25 Ex. 2856, T. 25360, 25363.

138. The well-considered statements of
1 British Cabinet Minister Oliver Lyttleton and ex-
2 President Herbert Hoover as originally reported per-
3 haps best explains the entire situation, when they
4 said respectively -- that it would be "a travesty
5 of history ever to say that America was forced into
6 the war with Japan" and "* * * we would never have
7 been attacked by the Japanese if we had not given
8 them provocation."

139. As the A-B-C-D Powers had made the
11 encirclement both military and economic complete, we
12 submit that the first blow was not struck at Pearl
13 Harbor; it was struck when the economic war started
14 long before then. Steadily it constantly contracted,
15 became more effective and devastating so that it
16 threatened Japan's very existence and if continued
17 would have destroyed her. It is evident that these
18 men knew this, believed it, had reason to believe it
19 and acted on their belief. These men are Japanese.
20 They are not Americans or members of the great British
21 Commonwealth of Nations -- nor Dutch, nor Russian,
22 nor French. They were Japanese and their decision was
23 one of life or death for their country. They loved
24 their country and they were in a position where they
25 had to make a decision. We ask each member of this

1 Tribunal to put himself in their position. Would you;
2 could you as patriots, have made any other decision?
3 With that situation, with that honest belief, with
4 ample reason for such belief -- can such a decision
5 whether right or wrong, be called that of criminals
6 and not of patriots? If it was not made with criminal
7 intent but made from motives of patriotism and a
8 sincere belief that the measures decided upon were
9 necessary to protect and preserve their country,
10 then we submit it cannot be held to be criminal by
11 this Tribunal.

12 If the Tribunal please, with respect to
13 Appendix A, may it be transcribed in the transcript?
14 I do not propose to read it.

15 (Whereupon, Appendix A, not read,
16 was copied into the record as follows:)

17 APPENDIX A.

18 July 2, 1940.

19 Aluminum, antimony, asbestos, chromium,
20 cotton linters, flax, graphite, hides, industrial
21 diamonds, manganese, magnesium, Manila fiber, mercury,
22 mica, molybdenum, optical glass, platinum group metals,
23 quartz crystals, quinine, rubber, silk, tin, toluol,
24 tungsten, vanadium, wool;

25 Ammonia and ammonium compounds, chlorine,

~~dimethylaniline, diphenylamine, nitric acid, nitrates,~~
1 nitrocellulose having a nitrogen content of less than
2 12 percent, soda lime, sodium acetate anhydrous,
3 strontium chemicals, sulphuric acid fuming;

4 Aircraft parts, equipment, accessories;
5 armor plate, glass, nonshatterable or bullet proof,
6 plastics, optically clear, optical elements for fire
7 control instruments, aircraft instruments, etc.;

8 Metal-working machinery for: Melting or
9 casting, pressing into forms, cutting or grinding,
10 power driven, welding.^{a.}

11 July 26, 1940.

12 Petroleum products, tetraethyl lead, iron
13 and steel scrap.^{b.}

14 September 12, 1940.

15 Equipment (excluding minor component parts)
16 which can be used, or adapted to use, for the pro-
17 duction of aviation motor fuel from petroleum,
18 petroleum products, hydrocarbons, or hydrocarbon
19 mixtures, by processes involving chemical change;
20 and any plans, specifications, or other documents
21 containing descriptive or technical information of any
22 kind (other than that appearing in any form available
23 to the general public) useful in the design, construc-
24
25

a. Ex. 2801, Tr. 25192. b. Ex. 2801-B, T. 25193.

1 tion, or operation of any such equipment, or in
2 connection with any such processes.

3 Equipment (excluding minor component parts)
4 which can be used, or adapted to use, for the pro-
5 duction of tetraethyl lead; and any plans, specifica-
6 tions, or other documents containing descriptive or
7 technical information of any kind (other than that
8 appearing in any form available to the general public)
9 useful in the design, construction, or operation of
10 any such equipment, or in connection with any such
11 processes.

12 Plans, specifications, and other documents
13 containing descriptive or technical information of
14 any kind (other than that appearing in any form avail-
15 able to the general public) setting forth the design
16 or construction of aircraft or aircraft engines.^{a.}

17
18 September 25, 1940.

19 All grades of iron and steel scrap. Licenses
20 will be issued to permit shipments to the countries
21 of the Western Hemisphere and Great Britain only.^{b.}

22 September 30, 1940.

23 : Iron and steel scrap.^{c.}

- 24
25 a. Ex. 2803, Tr. 25219.
b. Ex. 2804, Tr. 25222.
c. Ex. 2805, Tr. 25222.

December 10, 1940.

1 Iron and steel -- iron ore, pig iron;
2 ferro alloys -- ferromanganese, spiegeleisen, ferro-
3 silicon, ferrochrome, ferrotungsten, ferrovanadium,
4 ferrocolumbium, ferrocabontitanium, ferrophosphorus,
5 ferromolybdenum;

6 Semi-finished products -- ingots, billets,
7 blooms, slabs, sheet bars, skelp, wire rods;

8 Finished products -- structural shapes, steel
9 piling, plates, skelps, rails, splice bars and tie
10 plates, bars -- merchant, concrete reinforcing, cold
11 finished, alloy, tool steel hoops and bailing bands,
12 pipe and tube, drawn wire, nails and staples, barbed
13 and twisted wire, woven wire fence, bale ties, fence
14 posts, black plate, tin plate, sheets, strip, wheels,
15 axles, track spikes, castings, forgings.^a

16
17 December 20, 1940.

18 Bromine, ethylene, ethylene dibromide,
19 methylamine, strontium metals and ores, cobalt,
20 abrasives and abrasive products containing emery,
21 corundum, or garnet, as well as abrasive paper and
22 cloth; plastic molding machines and presses, measuring
23 machines, gauges, testing machines, balancing machines,
24 hydraulic pumps, tools incorporating industrial

25
a. Ex. 2807, Tr. 25333-4.

1 diamonds, equipment and plans for the production of
2 aviation lubricating oil.^{b.}

3 January 10, 1941.

4 Copper: ore -- concentrates, matte and
5 unrefined copper including blister, black or coarse,
6 converter, and anodes; refined copper in bars, billets,
7 cakes, ingots, slabs and other commercial shapes;
8 old and scrap copper; pipes and tubes; plates and
9 sheets; rods; wire -- bare, insulated wire and cable,
10 rubber-covered wire, weatherproof wire, other insulated
11 wire; other primary fabrications; fabrications for
12 munitions purposes, alloys, other than brass and
13 bronze; Brass and bronze: scrap and old, ingots
14 and other commercial shapes, bars and rods, plates
15 and sheets, pipes and tubes, wire (bare or insulated),
16 other primary fabrications, fabrications for munitions
17 purposes; Zinc: ore, concentrates, and dross; cast
18 in slabs, plates or blocks; rolled in sheets and
19 strips; other forms including scrap; alloys; dust;
20 manufactures containing 20 percent or more zinc;
21 Nickel: ores, concentrates, and matte; metal in any
22 form including ingots, bars, rods, sheets, plates and
23 scrap; alloys containing 10 percent or more nickel
24 including scrap; nickel compounds (chemical) contain-

25 ^{b.} Ex. 2808, Tr. 25240.

1 ing 10 percent or more nickel; Potash: potassium
2 salts and compounds; potassium hydroxide, potassium
3 carbonate, potassium chlorate, potassium perchlorate,
4 potassium cyanide, potassium iodide, potassium
5 nitrate, potassium permanganate, potassium acetate,
6 potassium bicarbonate, potassium bitartrate;
7 Potassic Fertilizer Materials: potassium chloride,
8 potassium sulphate, all other potassic fertilizer
9 materials containing 27 percent or more potassium
10 oxide equivalent, all combinations and mixtures of
11 any of the foregoing containing potash salts of 27
12 percent or more potassium oxide equivalent.^{a.}

13 February 4, 1941.

14 Well and refining machinery, petroleum and
15 gas well equipment and parts including well drilling
16 machinery and parts, petroleum refining machinery,
17 equipment and parts, radium, metal, salts and compounds,
18 uranium, metal, salts and compounds, minerals, calf
19 and kip skins, calf skins, kip skins.^{b.}

21 Iron Ore: iron ore -- Iron and Steel Semi-
22 manufactures: pig iron, iron and steel scrap, No. 1
23 heavy melting steel scrap (Category 2), No. 2 heavy
24 melting steel scrap (Category 3), hydraulically

25 a. Ex. 2809, Tr. 25251.

b. Ex. 2810, Tr. 25251-2.

1 compressed and baled sheet scrap (Categories 7 & 8),
2 cast and burnt iron scrap (Categories 1, 9, 10, 11,
3 12), other (Categories 4, 5, 6, 13) (Includes heavy
4 shoveling steel, selected rail scrap, machine shop
5 turnings, wire shorts, rerolling rails, rejects,
6 etc.); tin plate scrap -- (includes tin plate clippings,
7 cuttings, stampings, trimmings, skeleton sheets and
8 all other miscellaneous pieces of discarded tin plate,
9 which result from the manufacture of tin plate, and
10 of tin-bearing articles from tin plate) (Placed under
11 export control, Executive Order, effective April 16,
12 1936); tin plate circles, strips, cobbles and scroll-
13 shear butts; waste-waste tin plates; terneplate
14 waste-waste, clippings and scrap;

15 Iron and Steel Products -- steel ingots,
16 blooms, billets, slabs, sheet bars, and tin plate
17 bars (Include ingot iron, and other iron made in
18 steel-making furnaces) not containing alloy, alloy
19 steel including stainless;

20 Iron and Steel Bars and Rods (Include rounds,
21 flats, squares, etc.) -- steel bars cold finished,
22 iron bars, concrete reinforcement bars (Include
23 deformed and twisted), other steel bars, including
24 drill rods, merchant bars, tool steel bars, and drill
25 steel: not containing alloy, stainless steel, alloy

steel other than stainless, wire rods. Iron and
1 Steel Plates, Sheets, Skelp and Strips (Include
2 waste and waste-waste plate, sheet and strip):
3 Plates: armor plate, other than that listed in the
4 President's Proclamation of May 1, 1937, boiler
5 plates, other plates, not fabricated (Include hot
6 and cold rolled), not containing alloy, stainless
7 steel, alloy steel other than stainless; Skelp iron
8 and steel (consists of long strips used in the
9 manufacture of pipes and tubes); Iron and Steel
10 Galvanized -- iron sheets, steel sheets; steel
11 sheets, black ungalvanized (Include hot and cold
12 rolled), not containing alloy, stainless steel,
13 alloy steel, other than stainless; iron sheets,
14 black (Include material under 1/8" in thickness in
15 6033-6036); strip, hoop, band, and scroll iron or
16 steel -- cold rolled, not containing alloy, stain-
17 less steel, alloy steel, other than stainless, hot
18 rolled, not containing alloy, stainless steel, alloy
19 steel, other than stainless; Tin Plate and Taggers'
20 tin (Include waste tin and plate), Terneplate
21 (Includes waste terneplate); Steel Mill Manufactures--
22 structural iron and steel, water, oil, gas and other
23 storage tanks complete, and knocked-down material
24 for permanent or temporary installation; structural
25

1 shapes, not fabricated (Include heavy, light, and
2 bar-sized structural shapes), fabricated structural
3 iron or steel; plates, fabricated, punched, or
4 shaped, steel piling; railway track materials --
5 rails -- 60 pounds and over per yard, less than 60
6 pounds per yard, relaying rails; rail joints, splice
7 bars, fishplates, and tieplates, switches, frogs,
8 crossings, and derails, railroad spikes (Include
9 railroad screw spikes); Tubular products and fittings--
10 boiler tubes, seamless, welded; casing and oil line
11 pipe, seamless, welded; seamless black pipe, other
12 than casing and oil line, cast-iron pressure pipe,
13 cast-iron soil pipe, welded black pipe, steel,
14 wrought iron, welded galvanized pipe: steel, wrought
15 iron; rigid electrical conduit of iron or steel; all
16 other iron and steel pipe (Include riveted pipe and
17 mechanical steel tubing); Wire and manufactures:
18 iron or steel wire, uncoated (Includes plain steel,
19 stainless steel, and alloy steel other than stainless),
20 galvanized wire, barbed wire, woven wire fencing,
21 wire rope and wire strand -- wire rope and cable,
22 not insulated, wire strand; electric welding rods and
23 wire of iron or steel; welding rods and wire of iron
24 or steel (other than electric); bale ties; electrical
25 and telephone transmission wires of iron or steel,

coated with aluminum, copper, or other metals;

1 insulated wire and cable having an iron or steel core;
2 twisted wire; other coated wire of iron or steel;
3 castings and forgings -- grey-iron castings (Include
4 semi-steel castings), malleable-iron castings, ingot
5 molds, steel castings -- not containing alloy, alloy
6 steel, including stainless, railway car wheels and
7 axles (Exclude railway car ties, locomotive wheels,
8 tires and axles); railway car wheels; railway car
9 axles, without wheels; railway car axles, fitted with
10 wheels; Iron and Steel forgings (Exclude steel grinding
11 balls) -- not containing alloy, alloy steel including
12 stainless; Advanced Manufactures -- fence posts, metal
13 drums and containers, filled or unfilled, for oil,
14 gas, and other liquids; tool bits or tool bit blanks;
15 Ferro Alloys -- ferrochrome, ferrocolumbium, ferro-
16 manganese and spiegeleisen, ferromolybdenum, ferro-
17 phosphorus, ferrosilicon, ferrotitanium and ferro-
18 carbontitanium, ferrotungsten, ferrovanadium.^a

19
20 February 25, 1941.

21 Belladonna: belladonna leave, U.S.P.;
22 belladonna plaster, U.S.P.; extract of belladonna,
23 U.S.P.; fluid extract of belladonna leaf, N.F.;
24 tincture of belladonna, U.S.P.; belladonna ointment,
25
a. Ex. 2811, Tr. 25253.

U.SP.; belladonna root, U.S.P.; fluid extract of
1 belladonna root, U.S.P.; belladonna liniment, N.F.;

2 Atropine: atropine, U.S.P. alkaloid;

3 atropine hydrobromide; atropine hydrochloride;

4 atropine methylbromide; atropine methylnitrate;

5 atropine nitrate; atropine salicylate; atropine sul-

6 fate, U.S.P.; atropine sulfuric acid; atropine

7 valerate.

8 Sole Leather -- bends, backs, and sides.

9 Belting leather.^{a.}

10 February 25, 1941.

11 Beryllium: ores and concentrates, metal,

12 alloys and scrap, beryllium salts and compounds.

13 Graphite electrodes; Aircraft Pilot Trainers;

14 Trainers for ground instruction of pilots, student

15 pilots and combat crews for aircraft in instrument

16 flying, navigation, bombing or gunnery.^{b.}

17 March 4, 1941.

18 Cadmium -- ores and concentrates, metal,

19 alloys, cadmium salts and compounds, cadmium chloride,

20 cadmium oxide, cadmium sulfate, cadmium plating

21 salts, cadmium sulfide, cadmium lithopong.

22 Carbon Black -- carbon black, including gas

23 a. Ex. 2812, Tr. 25253-4.

24 b. Ex. 2813, Tr. 25254.

25

1 black.

2 Coconut Oil -- edible, inedible. Copra.

3 Cresylic Acid and Cresols. Fatty acids
4 produced from vegetable oils under export control.

5 Glycerin. Palm-Kernel Oil and Palm Kernels -- palm
6 kernel oils, edible, inedible, palm kernels.

7 Pine Oil. Petroleum Coke. Shellac -- lac,
8 crude, seed, button and stick, unbleached shellac,
9 bleached shellac.

10 Titanium -- ores and concentrates, ilmenite,
11 rutile, metal, alloys, titanium salts and compounds,
12 titanium dioxide, titanium tetrachloride.^{a.}

13 Jute: fiber, burlaps except when used as a
14 covering for other merchandise or as a component part
15 of other products, bags except when used as a con-
16 tainer for other merchandise;

17
18 Lead: ore and matte, pigs and bars, sheets
19 and pipes, solder;

20 Borax: boric acid, borates, crude and refined.

21 Phosphates: phosphoric acid, phosphorus,
22 phosphate rock containing 20 percent or more phosphorus
23 pentoxide equivalent, sulphur-phosphate containing
24 40 percent or more phosphorus pentoxide equivalent.^{b.}

25
a. Ex. 2814, Tr. 25255.
b. Ex. 2815, Tr. 25258.

1 March 27, 1941.

2 Animal, fish and marine mammal oils, fats
3 and greases, edible and inedible;

4 Vegetable oils and fats, edible and inedible;
5 vegetable oil seeds, and vegetable and other oil-
6 bearing raw materials; Fatty acids; Bristles; Nux
7 vomica; Nylon; Kapok; Purified wood pulp containing
8 80 per cent or more alpha-cellulose; Cork; Carbon
9 electrodes; Petrolatum; Allyd resins; Explosives in
10 addition to those listed in Proclamation 2237 of
11 May 1, 1937; Detonators and blasting caps; Napthalene;
12 Phenol; Aniline; Phthalic anhydride; Dibutyl phtalate;
13 Diethyl phtalate; Dipropylphtalate; Omega Chloro-
14 acetophenone; Styrene; Nitroderivatives of benzene,
15 toluene, xylene, napthalene, and phenols in addition
16 to those specified in the proclamation of May 1, 1937;
17 Strychnine and salts thereof; Polymers and copolymers
18 of butadiene, acrylonitrile, butylene, chloroprene,
19 styrene, vinylidene, chloride, and synthetic rubber-
20 like compounds, fabricated or unfabricated; Chloropic-
21 rin; Tartaric acid; Rochelle salts; Cuprous oxide;
22 Acetic aldehyde; Pentaerythrite; Formaldehyde; Nitro-
23 guanidine; Guanidine nitrate; Dicyanodiamide; Mono-
24 chloroacetic acid; Chloroacetyl chloride; Thiodiglycol;
25 Ethylene chlorhydrine; Hexamethylene tetramine;

1 Acrylonitrile; Butadiene; Butylene; Chloroprene;
2 Sodium chlorate; Sulphur chlorides; Arsenic trichloride;
3 Vinylidene chloride; Iodine.^{a.}

4 April 14, 1941.

5 Machinery.^{b.}

6 April 14, 1941.

7 Vegetable fibers and manufactures; Theo-
8 bromine; Caffein; Sodium cyanide; Calcium cyanide;
9 Casein.^{c.}

10 May 28, 1941.

11 Control extended to Philippine Islands.^{d.}

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24 a. Ex. 2816, Tr. 25259.
25 b. Ex. 2817, Tr. 25260.
c. Ex. 2818, Tr. 25260.
d. Ex. 2820, Tr. 25262-3.

1 THE PRESIDENT: Mr. Logan, Port Moresby is
2 not a mandated territory.

3 MR. LOGAN: I am sorry; I didn't get your
4 remark.

5 THE PRESIDENT: I said Port Moresby is not
6 a mandated territory; it is in Australian territory,
7 the territory of Papua.

8 MR. LOGAN: I am sorry, your Honor. I got
9 it from the record somewhere.

10 Mr. Roberts will proceed now.

11 THE PRESIDENT: Mr. Roberts, we have not
12 received your material.

13 MR. ROBERTS: I will proceed with Section L,
14 Japanese Naval Activities prior to December 7, 1941.
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JAPANESE NAVAL ACTIVITIES PRIOR TO DECEMBER 7, 1941

1
2 Preparation for war is not an offense under
3 the Charter. It has never been considered as such by
4 any nation in the history of the world. At this very
5 moment the leaders of the governments of every power
6 of the globe are vitally concerned with their country's
7 state of military preparedness. Preparation for war
8 and rearmament are identical expressions. The kindred
9 Tribunal in Nuernberg definitely ruled the latter was
10 no offense under their Charter.¹
11

12 Therefore, if the physical act of military
13 preparation or rearmament is not in and of itself
14 criminal or wrong it becomes so only if pursued for the
15 purpose of waging aggressive war.² The determination of
16 whether or not the marshalling of a nation's military
17 strength and the plans that made such possible are
18 criminal provokes a most profound question.
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1. Nuernberg Judgment p. 137.
2. Ibid.

1 By the exercise of the "hindsight rule"
2 it becomes possible to start with the war that
3 has been waged and look back pointing out the varied
4 and many moves that created the physical ability of
5 a nation to fight. Undoubtedly this is the procedure
6 of reasoning employed by the prosecution here, for
7 they have seized upon every step of the military and
8 naval history of Japan during the Indictment years as
9 evidence of preparation for aggressive war.

10 German counsel at Nuernberg stated it rather
11 well when he said:

12 "Armament may, in fact must, look just the
13 same if it is carried out for security and defense as
14 it does in the case of aggressive war."^{1.}

15 Excerpts from General Marshall's report as
16 Chief of Staff were there cited:

17 "Nature tends to abhor weakness... Weakness
18 presents too great a temptation to the strong... "We
19 must start, I think, with a correction of the tragic
20 misunderstanding that a security policy is a war policy."^{2.}

21 The prosecution commences its criticism
22

- 23 1. Nuernberg transcript p. 13,128, July 8.
24 2. Marshall, Report of Chief of Staff U. S. Army,
25 6. 117 (1945) quoted in Nuernberg transcript p.
13,126, July 8.

1 of Japanese naval preparations with the allegation that
2 Japan freed itself from the Washington and London Naval
3 Treaties in order to prepare for war.¹ This of itself
4 is no charge at all. To denote criminal activity the
5 evidence must prove beyond a reasonable doubt² that the
6 ultimate objective was more than ordinary security
7 measures of defense -- was more than war itself -- and
8 was, in fact, aggressive war.
9

10 With this determination of the prosecution's
11 onus we generalize for a moment. The casual observer
12 might wonder, in view of the prosecution's pointed
13 statements, that Japan, wicked and willful as it was
14 during this period, even concerned themselves with the
15 small matter of a naval limitations treaty if they were
16 bent upon aggressive action. It would hardly please
17 the vehement prosecution to infer that the Japanese
18 action in this regard indicated a respect for treaties
19 quite inconsistent with the prosecution's theory. It
20 would not be in keeping with the inferences and even
21 bold statements of the prosecution to suggest that this
22 island nation might have regarded naval power as the
23 very soul of its national security. And it might be
24 considered the height of impertinence to speculate that
25

1. Prosecution argument para. F-54, tr. 39,395.

2. Tr. 23.

1 this country, which had during the short years before
2 risen to a position of international recognition as a
3 progressive and leading power, quite frankly and open-
4 ly professed to the world it felt its security demanded
5 a more equal distribution of naval strength. But at such
6 risk as the defense may incur we advance this thesis
7 and move to a discussion of the Japanese action regard-
8 ing the naval treaties.

9 At the time of the execution of the Washington
10 Naval Treaty in 1922 there existed a bond of friendship
11 and trust between Japan, the United States, Great
12 Britain and France which had been tied during their
13 alignment in World War I. Such a condition of inter-
14 national feeling as then existed must have discouraged
15 strong criticism of Japan's conceding to a naval limi-
16 tation which rated her beneath that of Great Britain
17 and the United States. But those who appraised the
18 agreement from purely a naval aspect were not even then
19 satisfied with the substance of the armaments allotted
20 Japan.
21

22 It is not difficult to realize that by 1930
23 those naval leaders upon whose shoulders the burden of
24 providing security from the possibility of attack by
25 sea were even more highly concerned with the treaty

1. Tr. 26,797.

1 restrictions. For during the eight years that elapsed
2 from the time of the original signing, the weapons of
3 warfare had changed, the international situation had
4 undergone a metamorphosis and the complacency of Japan
5 based upon its original feeling of security at having
6 been so recently allied with the United States and
7 Great Britain dissipated.²

8 By the terms of the Washington Treaty the
9 number of capital ships and aircraft carriers permitted
10 Japan was limited to 60% of those of the United States
11 and Great Britain.³ It was but natural therefore that
12 reasoned opposition existed to the culmination of the
13 1930 London Treaty without modifications being made
14 which satisfied the requirements advocated by the Naval
15 General Staff. But regardless of the international
16 grumbling in Japan, often a healthy exercise of govern-
17 ment functions, the treaty was concluded and with the
18 approval of the Naval General Staff.¹

19 The prosecution charge that from 1930 to 1936
20 the Navy worked zealously to free itself from the treaty
21 restrictions² amounts to no less than a distortion of
22 the evidence. The evidence has been that Japan sought
23 a modification of that treaty³ and the imposition of
24

25 2. Ex. 3011; tr. 34,512, 34,524

3. Tr. 26,660

1. Ex. 3011

2. Prof. argument para. F-55, tr. 39,396

3. Tr. 26,782

1 even severer restrictions, which if accepted could not
2 have but precluded the possibility of aggressive ac-
3 tion being taken by the powers.⁴ The 1930 treaty limi-
4 tation on auxiliary vessels proved a severe restric-
5 tion on Japan, since it closed the door on the possi-
6 bility of providing the needed extra security (through
7 the construction of lighter vessels) caused by the
8 60% restriction on capital ships.⁵

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25 4. Tr. 26,785

5. Tr. 26,660

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Shortly after the 1930 naval treaty and about the time of Secretary Stimson's so-called "Hats Off" speech advocating naval building in the United States the Japanese General Staff was attempting to replenish its Navy with ships under 600 ton capacity and which were not covered by treaty limitations. This experiment proved disastrous and deplorable accidents occurred involving the sacrifice of many lives through the capsizing in heavy weather of these torpedo boats which were too heavily armed.¹

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Coming to the 1934 preliminary naval conference at London called at the invitation of Great Britain we find the prosecution charging that Japan delayed in accepting the invitation given in May and did not send a delegate until October.² This is also at variance with the facts for the British invitation was received by Japan on May 17 and acceptance of the proposal was made on May 30.³ The then Japanese Ambassador to Great Britain -- MATSUDAIRA -- was nominated as its delegate. Talks with the British commenced on June 18 and with the United States on June 19.⁴ The talks were discontinued on June 12

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1. Tr. 26,661
 2. Pros. Argument para. F-57, Tr. 39,399.
 3. Tr. 26,783
 4. Tr. 26,783.

1 with the understanding that they should be reopened
2 on October 23 at which time Vice Admiral YAMAMOTO
3 was named as an additional delegate and promptly
4 arrived to carry on deliberations at the time fixed.¹

5 The why and wherefore of Japan's proposal
6 at this 1934 sub-conference and the 1935 discussions
7 that followed are set out in the personal testimony
8 of a defense witness who is perhaps the only man
9 living today who attended all of the naval conferences
10 in the high capacity of an expert.² An accurate word
11 picture of the exchange of thoughts and detailed
12 discussions which occurred at those conferences and
13 which are not to be found in their entirety in official
14 reports were sought to be presented before this
15 Tribunal through the personage of this witness. The
16 defense even suggested that the prosecution should
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24 1. Tr. 26,782
25 2. Tr. 26,780

1 welcome this chance to cross-examine a witness
2 of such reputation and knowledge¹ but they did not
3 avail themselves of the opportunity.²

4 Unfortunately the view was accepted that
5 his testimony was particularly objectionable
6 because of its length,³ with the result that its
7 delimitation to a small part of its original form
8 destroyed what we considered to be valuable back-
9 ground revelations needed to fully comprehend the
10 events that led to the Japanese abrogation.⁴

11 The thought seems to prevail that the
12 so-called "common upper limit" proposed by the
13 Japanese delegation at the London preliminary
14 negotiations in 1934 and the London Conference of
15 the following year was not only an abrupt proposal
16 but one solely calculated to benefit Japan.⁵
17 But such an opinion is neither just nor borne out
18 by the evidence. Historically speaking, it could
19 hardly be called a Japanese plan for, as to the
20 original idea, it would be more in accordance with
21

- 22
23 1. Tr. 26,779
24 2. Tr. 26,820
25 3. Tr. 26,777
4. Tr. 26,780.
5. Indictment -- Appendix A, Section 5(a).

1 the truth to say that it originated with other
2 powers.

3 On August 7, 1923 the British Embassy
4 sent to the Japanese Government an Anglo-French
5 compromise plan containing a provision fixing a
6 maximum limit for cruisers and submarines.¹ It
7 resulted in what is known as the Paul Boncour
8 plan after further study in the 1927 Disarmament
9 Preparatory Commission of the League of Nations.²
10 Another similar instance was a proposal made by
11 the British delegate at the Geneva General Dis-
12 armament Conference in November, 1932 which called
13 for a reduction of the air forces of leading
14 powers to the level of Great Britain which at
15 that time ranked fifth.³ But it remains to be seen
16 that nobody charged Great Britain with submitting
17 a proposal that had no chance of acceptance.
18 There was also the so-called "Hoover Plan" of the
19 United States submitted at the 1932 Geneva Con-
20 ference calling for sweeping reductions of one-
21 third to one-fourth in naval armaments but no one
22 accused the United States of bad faith in proposing
23
24

- 25
1. Ex. 3011
2. Tr. 26,793
3. Tr. 26,803

1 an unreasonable program.¹

2 Thus all of the above plans were taken into
3 consideration by Japan more or less as a pattern
4 in formulating their proposal.² And since the
5 Japanese delegates were under instructions to
6 forego immediate insistence or enforcement for
7 a considerable period, they did not feel their
8 proposal was anything incapable of acceptance or
9 unreasonable in nature.³

10 As to the argument predicated upon the
11 differences in vulnerability of the nations in-
12 volved which required various allotments in naval
13 strength to insure security, the Japanese delegate,
14 Admiral NAGANO, admitted the need for adjustment
15 in regard to Great Britain's strength might be taken as
16 the common upper limit and that there would never
17 actually be parity on this basis. He even went
18 so far as to say that Japan was willing to have
19 Great Britain exceed the common upper limit but
20 that great care should be taken in working it out.⁴

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22
23 1. Tr. 26,803
24 2. Ibid
25 3. Ibid
4. Tr. 26,811-26,812.

1 Further, it was pointed out that in spite of the
2 difference of vulnerability between the United
3 States and Great Britain, they nevertheless had
4 parity.¹ Thus it was pointed out that if the
5 United States, although less vulnerable than
6 Great Britain, had naval parity why should there
7 be a great difference between the naval strength
8 of the United States and Japan even if it be
9 conceded that the latter was less vulnerable.²
10 Japan however contended that they were more
11 vulnerable than the United States.³

12 But rather than lose ourselves in the
13 arguments concerning the justification of naval
14 strength allotted to the leading powers it would
15 be much better to simply point out that the
16 Japanese action ultimately taken was legally per-
17 missible under the treaty provisions.⁴ Moreover,
18 before leaving the 1934 conference, after receiv-
19 ing what amounted to an invitation to do so,⁵
20 the delegates wired their government for
21

- 22
23 1. Tr. 26,786.
24 2. Ibid
25 3. Ibid
4. Tr. 11,251
5. Tr. 26,051, 26,815

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instructions. Thereafter, Japan insisted on further
1 explainin; her views but it was refused. She did not
2 even then leave but advocated that the five powers
3 agree on such matters as seemed possible such as the
4 use of submarines, but Great Britain rejected this
5 proposal.² The Japanese delegates then suggested
6 that, in lieu of their leaving the conference, an
7 indefinite postponement be had. But this, too, was
8 rejected by the British.³ It was only when the
9 Japanese proposal was definitely rejected that they
10 withdrew.⁴ But in keeping with the request made she
11 left an observer.⁵ In so acting she was within her
12 rights under Article 22, Paragraph 1 of the Treaty
13 which provided for such a step.
14

15 Such small attempts to concoct a conspiracy or
16 to introduce matters which tended to point a finger
17 in that direction is revealed in the reference to
18 YAMAMOTO and NAGANO, Japanese delegates to the 1934
19 and 1935 conferences respectively, serving together
20 for a considerable period of time as minister and
21 Vice minister of Navy in 1936 and 1937.⁶ The inference

- 22 1. Tr. 26,815
23 2. Tr. 26,816
24 3. Tr. 26,817
25 4. Tr. 26,818
5. Tr. 26,819
6. Tr. 11,182

being that as high-ranking naval officers they
1 worked together closely in a conspiracy tone. Upon
2 cross-examination it was revealed that the "consider-
3 able period of time" mentioned was a matter of sixty
4 days.

5
6 It was testified that NAGANO stated the
7 aircraft carrier was the principal type of aggressive
8 naval arm. But on cross-examination it was revealed
9 that NAGANO also listed battleships and other capital
10 ships as offensive naval arms, as well as aircraft
11 carriers.¹ The prosecution witness attempted to
12 take purported quotations of Admiral NAGANO, then an
13 accused here, and to construe them in the worst pos-
14 sible sense. But it appeared on cross-examination
15 that the quotations attributed were not actual quota-
16 tions and that when read in the light of the full text
17 of the document they appeared entirely different.²

18 We refer the Tribunal to prosecution exhibit
19 914, a portion of which is read into the transcript
20 commencing on page 9,241. This represents the views
21 of Admiral TOYODA, Soemu who in 1937 was Chief of the
22 Naval Affairs Bureau of the Navy Ministry and in a
23 position to express the thinking of that organization.
24

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1. Tr. 11,248
2. Tr. 11,244

1 In speaking of Japan's new supplementary program for
2 the fiscal year 1937, he pointed out that even if
3 Japan had remained a party to the London Naval
4 Treaty she would have been authorized to build 53,000
5 tons of shipping in the nature of replacements and
6 that the program for the coming year, even though
7 Japan was not now bound by the Treaty, provided for
8 the building of tonnage far below 53,000.¹ He said:

9 "Japan has no intention whatsoever of
10 making plans which might threaten the United States
11 and incite a shipbuilding competition."²

12 Was it an aggressive navy which through such a
13 spokesman said:

14 "If Japan and the United States should fight
15 one another in the future the war will be absolutely
16 a question of life and death to Japan; but not to
17 the United States. That is, to the United States it
18 will be a war for prosperity, while it will be a
19 question of life and death to Japan."³

20
21 The Japanese are criticized for rejecting
22 proposals from the United States, Great Britain and
23 France for the reciprocal exchange of naval construc-
24 tion information.⁴ There is a simple answer to this.

25 1. Ex. 914, p. 21

2. Ibid.

3. Ex. 914, Tr. 9,243.

4. Pros. Argument para. F-59,
Tr. 39,401.

1 The Japanese had refused to continue on under the
2 treaty limitations because they openly deemed its
3 provisions inadequate to provide the security Japan
4 desired. To have continued with the exchange of
5 naval construction information would have in effect
6 been the same as if Japan had remained bound by the
7 treaty restrictions. This because the truly superior
8 industrial strength and building capacity of the
9 United States and Britain dictated that they could
10 at all times keep as far ahead of Japan in naval
11 construction as the treaty had provided. It was
12 interpreted, therefore, as a device of the British
13 and the United States to check a weaker naval power --
14 treaty or no treaty.¹

15 II. EXPANSION AND STRENGTHENING OF NAVY.

16 Since, from its evidence and argument, the
17 prosecution has assumed that the strength of a
18 country's navy and the building of that strength is
19 indicative of guilt of some sort, we are forced to
20 answer their assertions. The prosecution points
21 with pride at their evidence of the rise in budget
22 figures as indicating the preparation of the Japanese
23 Navy for war. But they close their eyes to the com-
24 parable rise in the budget appropriations of the
25

1. Tr. 9,246

1 United States in 1931 which represented the amount
2 of \$358,000,000 and the rise up to \$3,500,000,000 in
3 1941.¹ And their mention of the increase in Japanese
4 Navy personnel falls with a dull thud when compared
5 with that of the United States. In the year 1940
6 when preparations may have been said to be at their
7 height, the United States naval personnel totalled
8 280,086 to Japan's 215,273.²

9 Desperate in their attempt to prove how
10 large and aggressive in design the Japanese Navy was,
11 they introduced two sets of statistics -- one by the
12 oral testimony of Admiral Richardson, former Com-
13 mander in Chief of the United States Fleet and,
14 incidentally, their only witness who appeared person-
15 ally in this phase,³ and charts prepared by official
16 sources of the Japanese Government.⁴ This respected
17 witness although testifying after the introduction of
18 the official Japanese figures as a prosecution exhibit
19 did not see fit to change his testimony relative to
20 the Japanese naval strength. It was only after being
21 challenged on cross-examination⁵ that he confessed
22 his mistake regarding aircraft carriers. There he
23

24 1. Ex. 3004, Tr. 26,652

25 2. Ex. 3003, Tr. 26,651

3. Ex. 1,249, Tr. 11,184

4. Ex. 916, 917, 918, Tr. 9,251; 9,253; 9,254.

5. Tr. 11,260

1 admitted that he had according to the prosecution's
2 own evidence, over-estimated the Japanese strength
3 by 26,000 tons. He was asked whether or not he con-
4 sidered this figure of 26,000 to be relevant, and he
5 said: "I think it is relevant."¹ With respect to
6 submarines he also confessed that he had misinformed
7 the Tribunal when he stated that Japan had 44 of such
8 craft in 1931 and 74 in 1941. He said however that
9 he was quite willing to accept the true figure of 67
10 submarines in 1931 and 95 in 1941. The effect of
11 his testimony was to show a loss of two submarines
12 rather than an increase² of thirty. However, had
13 this statement gone unchallenged by defense counsel
14 it would have been in the record and against the
15 Japanese Navy.

16 In regard to destroyers, he admitted error
17 in informing the Tribunal that Japan had 52 in 1931
18 and 102 in 1941. He stated the correct figures were
19 actually 110 destroyers in 1931 and 112 in 1941
20 showing an increase, not of fifty as he had originally
21 stated, but of only two.³

23 1. Tr. 11,260

24 2. Tr. 11,261

25 3. Tr. 11,260 - Cf. Tr. 11,185

1 THE PRESIDENT: We will recess for fifteen
minutes.

2 (Hereupon, at 1445, a recess was
3 taken until 1500, after which the proceed-
4 ings were resumed as follows:)

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MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. Roberts.

3 MR. ROBERTS: The witness stated the tonnage
4 of a ship is normally closely and highly coordinated
5 with the number of aircraft it can carry.^{1.} The evi-
6 dence discloses the total United States aircraft
7 tonnage as of the time of Pearl Harbor was 162,600
8 tons as compared to the Japanese total of 152,970 tons,
9 indicating if the prosecution witness was correct
10 in his statement, that the United States could carry
11 more planes even if they possessed less ships and that
12 this element was the most important in regard to the
13 operation of aircraft carriers, especially in regard
14 to the attack on Pearl Harbor.^{2.} The evidence then
15 shows that the average aircraft carrier capacity of
16 Japan was 480 planes^{3.} and the United States, 496
17 planes.^{4.} Surely, the aggressiveness of an aircraft
18 carrier is dependent on the planes it can carry.
19 Which fleet, therefore, was capable of the most
20 effective action?
21

22 Again, the evidence reveals the Japanese

- 23
24 (1. Tr. 11,257.
25 2. Tr. 11,257
3. Tr. 11,269
4. Tr. 11,267)

1 aircraft carrier "Hosho" was, according to the speci-
2 fications of the Washington and London Naval Treaties,
3 out of date and obsolete.^{1.} Although including the
4 outdated training ship "Hosho" as one of the Japanese
5 carriers in the compilation of its strength, the
6 prosecution dropped a similar vessel of the United
7 States, the Langley, from its compilation of American
8 aircraft carrier strength.^{2.}

9 Since Admiral Richardson stated that his
10 report to this Tribunal in the nature of testimony
11 was based on the United States official statistics,
12 we ask the Tribunal to compare Exhibit 3001 which is
13 admittedly official statistics from the Department of
14 Navy of the United States^{3.} with the witness' testi-
15 mony as to what the statistics were. The discrepancy
16 becomes obvious. Using the prosecution's own evidence
17 as the basis for Japan's figures and the official
18 statement of the Department of Navy of the United
19 States as the official basis for United States naval
20 strength^{4.} the comparison reveals ten aircraft carriers
21 for Japan and eight for the United States,^{5.} as being
22 on hand December 7, 1941. It also displays the United

24 (1. Ex. 916, Tr. 9,251; Ex. 3006, Tr. 26,663

25 2. Ex. 3001, Tr. 26,611; Tr. 11,278.

3. Tr. 26,612

4. Tr. 26,645, 26,647

5. Tr. 26,647, Cf. Tr. 11,185)

1 States is superior in tonnage in every capacity. The
2 totals pertaining to tonnage show the United States
3 had almost a 3 to 1 superiority over Japan with some
4 1,273,000 tons to 490,000 for Japan^{1.} and with a great
5 superiority in the number of ships.

6 As to vessels under construction as of December
7 7, 1941, suffice to say the United States so far out-
8 stripped Japan not only in tonnage but in number of
9 vessels that there is little need for comment. The
10 statistics show Japanese building of 88 vessels with
11 375,000 tons as compared to the United States con-
12 struction of 1,321 vessels of 2,000,000 tons.^{2.}

13 It was Admiral Richardson himself who said:

14 ". . . at the end of 1941 the United States
15 had under construction in major combat vessels -- that
16 includes battleships, aircraft carriers, cruisers,
17 destroyers and submarines, a total of something over
18 2,000,000 tons."^{3.}

19 He also stated that the American figures indicated that
20 Japan had less than 500,000 tons under construction as
21 of that time.^{4.}

22 As noted before, the basic figures used to

- 23
24
25 (1. Tr. 26,648
2. Tr. 26,650
3. Tr. 11,277
f. Ibid.)

1 compute the naval strength then present and potential
2 between the two countries have never been doubted
3 either by the prosecution or defense.^{1.} For these
4 figures on the Japanese side were originally introduced
5 by the prosecution themselves and they of course must
6 stand on their own evidence, while the American figures
7 were introduced upon an official statement, as hereto-
8 fore stated, from the Navy Department of the United
9 States in Washington, D. C.

10 As to the importance of showing a comparison
11 between the two countries as to naval strength and
12 naval potentiality, the President of this Tribunal said:

13 "The statement as to the Japanese strength
14 is of no value to us unless we know the American."^{2.}

15 The President also said:

16 "The whole point is to show aggression on
17 the part of the Japanese. To gauge that properly we
18 would have to know the strength of the possible oppos-
19 ing fleets in the Pacific and the plans covering them."^{3.}
20

21 It therefore follows that such argument ensu-
22 ing between the defense and prosecution as to the mean-
23 ing of the term: "On Hand" or "Under Construction"
24 becomes unworthy of discussion in view of the larger

25 (1. Tr. 26,613
2. Tr. 11,270
3. Tr. 11274.)

1 issues. As the parent documents are clear and un-
2 disputed, any technical interpretation seeking to
3 discourage the fact that the United States was in
4 possession of and was building a greatly superior
5 navy is pure sophism.

6 These comparisons are therefore important
7 only to show that Japan was aware of the naval poten-
8 tial of the United States and Great Britain and sought
9 to keep abreast, thereby discharging their naval
10 security obligations. In view of this we have testi-
11 mony indicating that the Japanese had knowledge of this
12 tremendous shipbuilding program of the United States^{1.}
13 but that they did fail to keep abreast in construction.^{2.}
14 This in spite of the fact they were aware of the so-
15 called American shipbuilding programs commonly referred
16 to as the Vinson Plan and the Stark Plan; together with
17 the Stinson "Hats Off" naval speech, the moving of the
18 fleet to Hawaii, the declaration of martial law in
19 the Philippines, the laying of mines in the eastern
20 entrance to the Singapore Straits, the reinforcement
21 of Australian troops in Malaya, the arrival of new
22 troops in the Philippines together with the military
23 conferences that were taking place between the
24

25 (1. Tr. 26,670
2. Tr. 26,669)

antagonistic powers.¹ It is indicated that these
1 matters and many more led to the Emergency Supple-
2 mentary Naval Program of May 1941.²

3 Thus, let it not be said that Japan was alone
4 in its naval preparations or that its naval leaders
5 were unwarranted in their fears. Never did the naval
6 leaders of Japan lose sight of the ability of the United
7 States and Great Britain to rapidly mobilize and draw
8 upon their vast resources.³ There were other matters
9 which set Japan apart from the war potential of the
10 United States and Great Britain such as the lack of
11 civilian aircraft capable of conversion.⁴ Or the
12 dangerously few merchant ships capable of conversion
13 as compared with other powers.⁵

14 Is it to be considered as against the
15 Japanese naval officers of Japan that they openly
16 proclaimed to the world that the aircraft carrier
17 as well as the battleship were the most aggressive
18 weapons?⁶ Or is it to be considered to their credit
19 to have done so in an open handed manner for all to
20 hear? The prosecution built its testimony with the
21 view of culminating their story at its pinnacle with
22

- 23 (1. Tr. 26,668
24 2. Ibid.
25 3. Tr. 26,671
4. Ibid.
5. Tr. 26,670-26,671
6. Tr. 11,185)

1 the Japanese attack against the United States at
2 Pearl Harbor. They sought to show a continuity of
3 action, of planning and of purpose alleging that
4 Japan built aircraft carriers and gained "overwhelming"
5 or "decisive" supremacy.^{1.}

6 Such a fictitious theory should be dissipated
7 in the light of the true facts and it should be noted,
8 for example, that the Japanese aircraft carriers were
9 constructed for action around the home waters -- not
10 for strikes at great distances.^{2.} For they could not
11 carry enough fuel for long scale operations.^{3.} The
12 prosecution's own witness -- Admiral Richardson --
13 said in his testimony that it was accurate to conclude
14 that Japan had not built its carriers for such long
15 range operations as the Pearl Harbor attack.^{4.} Yet
16 on the other hand he testified that the United States
17 carriers could easily have proceeded to the coast of
18 Japan and returned under their own power.^{5.}

19 The prosecution speaks of only a portion of
20 the United States Fleet being in the Pacific and that
21 it is completely meaningless to attempt to deduce from
22 comparative statistics that Japan built its navy in
23

24 (1. Ibid.
25 2. Tr. 26,672
3. Tr. 11,272
4. Ibid.
5. Tr. 11,271)

1 self-defense against the United States.¹ While the
2 evidence before mentioned has clearly shown the super-
3 iority of the United States Fleet, as could be expected
4 with its two ocean obligation, the factor of mobility
5 of a modern fleet especially through use of the Panama
6 Canal has been completely overlooked by the prosecution,
7 and quite conveniently so for it puts to naught much
8 of their argument.

9
10 Assuming that the United States with its
11 two oceans to defend, engaged in war with Japan alone,
12 it would have been of little security to Japan to have
13 relied upon the false reasoning that the United States
14 would employ only its Pacific Fleet as a matter of
15 fairness. It would have been indeed a remarkable bit
16 of foresight to have, in the year 1936, predicted that
17 Germany would be engaging the United States Fleet in
18 the Atlantic Ocean and that therefore Japan would not
19 need a large navy for its security.

20 We have also to consider that Japan could
21 not have been so ignorant as to overlook that Great
22 Britain, the traditional ally of the United States,
23 had some of its fleet in the Pacific and that the
24 Netherlands as well possessed naval strength here.
25 If in the event of a combined attack against Japan,

(1. Prosecution Argument para. F-62, Tr. 39,406)

the Japanese Navy as it existed would have looked
1 pitifully small indeed.

2 The dwarfing of the Japanese shipbuilding
3 plans when compared to the vast construction of the
4 United States is discounted by the prosecution in
5 their allegation that America was building ships
6 for other countries engaged in war against Germany
7 and that there is no evidence that she had any
8 intention of attacking Japan or of threatening to
9 do so. ^{1.} We point out again the movement of the
10 United States Fleet to Hawaii ^{1.} which admittedly was
11 for the express purpose of affecting Japan and also
12 refer the Tribunal to the evidence which has hereto-
13 fore been cited in other arguments which gave Japan
14 definite reason to believe it was endangered, contrary
15 to the conclusion now advanced by the prosecution.
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23 (1. Tr. 11,295)
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III. MANDATED ISLANDS

1 The question of whether Japan fortified the
2 Mandated Islands in violation of Article 22 of the
3 Covenant of the League of Nations or its treaty with
4 the United States^{1.} is not the real issue here involved.
5 Although the prosecution makes the charge that "the
6 expansion of Japan's Navy was for the purpose of ag-
7 gressive war is well evidenced by the fact that she
8 illegally fortified the mandated islands"^{2.} it has
9 behind it neither the benefit of logic nor does it
10 exhibit an understanding of the issues before this
11 Tribunal.
12

13 For them to state that "there could be no
14 contention that this (fortification of the Mandated
15 Islands) was done in self-defense since Japan had no
16 right to fortify them even for self-defense" is shallow
17 reasoning.^{3.} We may just as well say if a man carries
18 a gun in violation of law he has precluded himself the
19 right to assert self-defense even though he uses that
20 weapon in self-defense. Can it reasonably be argued
21 that the violation of a treaty could not take place
22 under the impetus of action in self-defense and that
23 such action destroys the right of self-defense? Cer-
24 tainly the prosecution must confine themselves to the
25

(1. Ex. 23, T. 9081; Ex. 29, T. 9084

2. Pros. argument para. F-64, T. 39408

3. Pros. argument para. F-64, T. 39408)

1 issues involved. It is again a matter of whether such
2 alleged fortifications took place for the purpose of
3 accomplishing aggressive war. The contention of the
4 defense has been and is that the evidence clearly
5 demonstrates there was no fortification of the Mandated
6 Islands and that even assuming for the sake of argument
7 that there were installations which could be termed
8 fortifications, they were actually installations for
9 the purposes of self-defense and not for aggressive war.

10 If then the crux of the charge is that Japan
11 prepared the islands for military use for the purpose
12 of waging aggressive war, we proceed to face the evi-
13 dence clearly and to point out wherein it failed or
14 was disproved.

15 In regard to the attitude of the Japanese Navy,
16 it should be frankly stated that they regarded the
17 South Sea Islands as geographically situated so as to
18 constitute the bulwark of sea defense for Japan.^{1.} It
19 was felt that if these islands fell into the hands of
20 an enemy it spelled certain defeat for Japan.^{2.} There
21 is no doubt that the Navy would have carried out defen-
22 sive construction on the islands were it not for treaty
23 restrictions.^{3.} These frank admissions demonstrate

24 (1. T. 26468
25 2. Ibid
3. T. 26469)

1 clearly the practical attitude of an organization
2 charged with the obligation of performing its design-
3 nated function for its country -- that of providing
4 naval security. If it represents aggressive thought
5 then the Japanese Navy has companionship in the other
6 military branches of the world.

7 The prosecution charges that as early as
8 January 20, 1937 the Privy Council approved a decision
9 to enable naval officers to be appointed as adminis-
10 trators of the South Sea Islands. They also charged
11 that the evidence shows after 1932 and particularly
12 after 1936 military and naval works of all kinds were
13 constructed on an extensive scale.^{1.} The defense pro-
14 duced in person HAYASHI, Hisac, who was Chief of the
15 South Seas Board which was the administrative organiza-
16 tion of the South Seas Mandated Islands, from 1933 to
17 1936.^{2.} During this period the witness testified: "I
18 state positively there were no military installations
19 in the South Sea Islands while I held my post there."^{3.}
20

21 The evidence reveals that at that time the
22 Minister of Navy, Admiral OSUMI, Minec, advised that
23 the construction of airfields for commercial purposes on
24 the islands had better be given up because it might

25 (1. Pros. argument para. F-65, T. 39409

2. T. 26491

3. Ibid)

1 cause difficulty with the League of Nations.^{1.} The
2 witness gives a detailed explanation of the transporta-
3 tion and commercial matters pertaining to some of the
4 Mandated Islands quite frankly. He denied that the
5 South Seas Board ordered the Nippon Yusen Kaisha not
6 to accept foreign passengers. And further denied that
7 the Minister of Navy or the Foreign Minister ever sug-
8 gested or ordered such a thing.^{2.} Surely if the prose-
9 cution were serious about their allegations that from
10 1932 Japan constructed military and naval works on the
11 islands they would have cross-examined this highly intel-
12 ligent, clear-spoken witness, but they failed to do so.^{3.}

13 The South Seas Bureau requested the assistance
14 of the Navy in the construction of cultural and indus-
15 trial facilities simply because there was no other
16 branch of the government to turn to.^{4.} In 1934 the
17 Bureau started a program of opening aerial communica-
18 tions between the islands for commercial purposes and
19 to aid in matters involving rescue work in case of ship-
20 wreck.^{5.} And the Navy took part in extending such help
21 as was requested "in so far as it could be done without
22 violating the relevant treaties and without interfering
23

- 24 (1. Ibid.
25 2. T. 26493-4
3. T. 26494
4. T. 26470
5. T. 26470)

with the Navy's proper function." ^{1.} Even then the Navy
1 was unable to assist much because of the state of af-
2 fairs in China and it was only after the Ghina Incident
3 came more or less to a standstill that they were able
4 to give assistance in the way of technical materials,
5 labor and transportation. ^{2.} The Navy then actually car-
6 ried out a study to determine whether or not the assist-
7 ance to be given the Bureau could be construed as con-
8 trary to treaty requirements and concluded that even
9 though a development on an island such as an airfield
10 could in times of war be converted to military usage,
11 the fact that they did not per se constitute a military
12 establishment was within the limits of the treaty of
13 the mandate limitations. ^{3.}

15 The witness YOSHIDA, whose position with the
16 Navy connected him directly with such matters, testified
17 with considerable detail as to the exact installations
18 placed on various islands and his statements were not
19 contradicted on cross-examination by the prosecution. ^{4.}

21 It was frankly admitted that after November 5,
22 1941 the Navy decided for the first time to carry out
23 the construction of defense works on the Mandated

- 24 (1. Ibid
25 2. T. 26471
3. Ibid
4. T. 26487)

1 Islands. But it was not until after the middle of
2 November that the construction corps left Japan for
3 some of the islands.^{1.} But this was only after condi-
4 tions between the Western Powers and Japan had come
5 to the danger point of explosion and it would have
6 been militarily ridiculous for the Japanese Navy to
7 have sat back quietly with folded hands. Much as the
8 prosecution would like to construe the normal course
9 of conduct as criminal, common sense as well as legal
10 reasoning must be used in judging matters of this kind.
11 If Japan had entertained the thought of aggressive war
12 against the United States, Great Britain or the other
13 countries, surely they would not have waited until this
14 desperately late day to begin such military construction
15 on the life line of Japan.

16 The testimony of Admiral Richardson relative
17 to the Mandated Islands is answered by the defense
18 through the testimony of a Japanese naval officer who
19 pointed out that Japan did not have supply facilities
20 completed on these islands prior to the war or at the
21 beginning of war.^{2.} The prosecution allegation that the
22 use of the islands for military purposes after the com-
23 mencement of hostilities December 7, 1941 was not within

24 (1. T. 26477)

25 (2) T. 26478)

1 Shunsuke, who served as Chief of the Nanyo-Cho, or
2 the South Seas Bureau, from 1940 to 1943.^{1.} We did
3 this solely for the purpose of providing the Tribunal
4 with a running account of testimony concerning the
5 periods covered by the prosecution charges. He testi-
6 fied as to the conditions on many of the mandated is-
7 lands and did so from personal experience. He spoke
8 of the ten year plan for the development of the islands
9 and told what it encompassed. He denied the prosecu-
10 tion allegation of military installations or fortifica-
11 tions. But the prosecution did not see fit to challenge
12 him by way of cross-examination.^{2.}

13 In direct answer to the prosecution charges
14 as to the construction of military installations on
15 Saipan we placed in the witness box OBARA, Junichi,^{3.}
16 a director of a large joint stock company with offices
17 in the South Seas. He told with frankness and clarity
18 about conditions there but the prosecution did not de-
19 sire to cross-examine him either.^{4.}

20 The prosecution points to the fact that visi-
21 tors were discouraged from visiting the various islands^{5.}
22 but unquestioned evidence of the defense shows that such
23

24 (1. T. 26495

2. T. 26498

3. T. 26499

25 4. T. 26502

5. Pros. argument para. F-69; T. 39415)

1 restrictions were over-exaggerated. In fact, it was
2 testified that a Japanese company, the Nanyo Trading
3 Company, which had offices in the American controlled
4 Island of Guam, quit because of numerous discriminatory
5 restrictions, and that in 1936 Japanese were prohibited
6 by American authorities from going there.^{1.}

7 The testimony of all of the prosecution wit-
8 nesses was adduced by paper alone. And this, as the
9 prosecution admits and the court well knows, consisted
10 almost entirely of statements in abbreviated form taken
11 from illiterate natives on several islands,^{2.} foreclosing
12 any chance of cross-examination. The only affidavit
13 which they produced of direct testimony other than
14 these natives was that of a Japanese national named
15 WAKAMATSU.^{3.} That witness lived in Japan and could
16 have been produced if the prosecution had so desired
17 for it was upon simple inquiry that the defense was able
18 to locate him. We charged in our opening statement
19 "that this witness' testimony was so vastly different
20 from his written testimony as given by the prosecution
21 that he must either be challenged as usurping the
22 truth or the falsity of the prosecution evidence will
23 stand as a glaring example of the disadvantage of
24

25 (1. T. 26502

2. Pros. argument para. F-67; T. 39410

3. T. 9091)

1 accepting paper testimony in place of the witness in
2 the box." ^{1.} Upon this witness' complete refutation of
3 the prosecution statement attributed to him and of-
4 fered in evidence by them ^{2.} the prosecution had the
5 opportunity of cross-examination and failed completely
6 in their half-hearted attempt to affect his testimony
7 in any way.

8 The prosecution impetuously seeks to cover
9 over this embarrassing portion of their presentation
10 of evidence by suggesting its willingness to submit
11 to the Tribunal the choice of which was the most trust-
12 worthy type of evidence -- that given by the witnesses
13 for the defense, who one after another appeared in
14 court in person rendering themselves available for
15 cross-examination, or the paper evidence of the illit-
16 erate natives on the islands who could never testify
17 in person because the prosecution would have been
18 ashamed and reluctant to produce them before this high
19 Tribunal as reliable witnesses.
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24 (1. T. 26406
25 2. T. 26532)

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1 It is hard to believe that the prosecution
 2 is being other than facetious when it charges the
 3 eight defense witnesses with evasiveness^{1.} concern-
 4 ing their testimony in rebuttal to the prosecution
 5 charges concerning the Mandated Islands. Especially
 6 so when the defense produced them in person with the
 7 result that the prosecution completely failed to
 8 cross-examine six of them and half-heartedly questioned
 9 the other two.^{2.} We, too, would like to call upon
 10 the Tribunal to compare the type of evidence presented
 11 by the defense with that offered by the prosecution.
 12 In this regard we call attention to the fact that the
 13 only witness which the defense was able to cross-
 14 examine was one which they themselves obtained and put
 15 on the stand personally. Objection was
 16 duly made to such testimony given in affidavit

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22 1. Prosecution argument, para. F-67, T. 39411.
 23 2. HAYASHI, T. 26949 - no cross-examination.
 24 KONDO, T. 26498 - no cross-examination.
 25 OBIARA, T. 26502 - no cross-examination.
 MUKAWA, T. 26507 - no cross-examination.
 SUZUKI, T. 26512 - no cross-examination.
 GOTO, T. 26521 - no cross-examination.
 IWASAKI, T. 26527 - no cross-examination.

1.
form by the prosecution.

1 The witness SUZUKI who was not cross-examined
2 by the prosecution, however, receives this comment in
3 the prosecution summation: "It should be noted he
4 did not testify that he never saw things that could be
5 used as military installations or easily converted
6 thereto."^{2.} This in face of the direct testimony of
7 the witness that there were no military fortifications
8 on the island. The prosecution evidence presented by
9 Admiral Richardson^{3.} pertaining to fortifications of
10 the island and the issue of whether there were bases
11 thereon was predicated not upon his own knowledge but
12 upon intelligence reports unverified and highly doubt-
13 ful.^{4.} All of which were answered most emphatically
14 and directly by a witness who was not discredited in
15 the slightest on cross-examination.^{5.}

17 The prosecution, realizing the utter and
18 complete failure of its proof during the general
19 phase attempted through the guise of rebuttal to
20 introduce further testimony in their usual fashion by
21 producing an affidavit from an American naval officer
22 and again failing to allow the defense the right of

24 1. T. 3090.

25 2. Prosecution Argument para. F-67, T. 39413.

3. T. 11197.

4. T. 11175.

5. T. 26480.

1.
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24 1. T. 3090.

25 2. Prosecution Argument para. F-67, T. 39413.

3. T. 11197.

4. T. 11175.

5. T. 26480.

1 cross-examination.^{1.} We sincerely urge the Tribunal
2 in viewing the evidence concerning this portion of
3 the case to compare the methods used by the prosecu-
4 tion and the defense in rendering evidence which might
5 be of aid to this Tribunal, and to at the same time
6 recall the sincerity and directness with which the
7 defense tackled the offering of proof by the prosecu-
8 tion in an honest and open-handed fashion.

9 IV. STRATEGIC PLANNING.

10 Regarding the prosecution argument concern-
11 ing the strategic and tactical planning and prepara-
12 tion of the navy^{2.} it becomes necessary to point out
13 that the preparation and possession of potential war
14 plans against a possible enemy is no offense either
15 under the Charter or under the rules of common sense.
16 The evidence has revealed that the United States had
17 potential war plans against the Japanese in highly
18 detailed form.^{3.} The prosecution's sole naval witness,
19 Admiral Richardson, in his high capacity, notified
20 this Tribunal that it was an established naval
21 procedure of the powers in recent times to have pre-
22 arranged naval plans against potential war enemies.^{4.}

24 1. Ex. 3840, T. 38115.

25 2. Prosecution Argument para. F-70, T. 39416.

3. Ex. 2851-A, T. 25547.

4. T. 11290.

1 The prosecution did a poor job of producing
2 evidence concerning naval plans and preparations for
3 the attack on Pearl Harbor and elsewhere relying
4 largely on what was admittedly the simple recollection
5 of a Japanese warrant officer of these highly detailed
6 matters.¹ The defense, in an honest and straight
7 forward fashion supplied these omissions by producing
8 for this Tribunal the intricate planning of the
9 Japanese Navy which led to those attacks.

10 At the time, the Tribunal questioned as to
11 why the defense was going into such detail

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1. Ex 1204, T. 11289.
2. T. 25705 and following.

1 concerning the matter of the plans that led to
2 initial hostilities.^{1.} There were two reasons. The
3 first^{2.} was to serve the Tribunal in as full a capacity
4 as possible by presenting the accurate facts for the
5 pages of the record. The second was to show that the
6 plans for the attack on Pearl Harbor or those encom-
7 passed in General Order Number 1 were not long in
8 preparation and that the navy in terms of military
9 time was called upon to perform a tremendous naval
10 operation with inadequate preparation which clearly
11 destroys the theory of a long preconceived plan of
12 waging war.

13 The opening of hostilities, namely, the
14 attack on Pearl Harbor, was decided upon only a short
15 time before the outbreak of war.^{2.} The plan itself
16 seems to have been drafted for the first time by
17 Headquarters of the Combined Fleet around May of
18 1941.^{3.} It was simply a potential and venturesome
19 plan to be used in the event of war with the
20 United States and the navy at all times
21

- 22
23 1. T. 26743.
24 2. T. 26710.
25 3. Ibid.

1 strongly felt that war with the United States could
2 be averted.^{1.}

3 The fact is highly immaterial that different
4 branches of the navy considered various proposed war
5 plans as advisable or inadvisable. The real question
6 is whether or not such plans constituted aggressive
7 planning and preparations for aggressive war, that is,
8 a war without just provocation or excuse. The
9 evidence does reveal that the Pearl Harbor Plan
10 together with Operational Order No. 1 was the brain
11 product of Admiral YAMAMOTO, Isoroku, Commander in
12 Chief of the Combined Fleet and that this plan was
13 opposed by the Chief of the Naval General Staff
14 NAGANO.^{2.} The evidence further establishes that such
15 planning and preparations were strictly matters
16 within the jurisdiction of the Naval General Staff
17 and the Combined Fleet having nothing to do with the
18 Navy Ministry.^{3.}

19
20 It is difficult to imagine that Japan had
21 either planned or prepared for aggressive war
22 against the Western Powers or was ready for such a
23 war when we find the deplorable condition of their

24 1. T. 26711.

25 2. T. 26717.

3. Ex. 3007, T. 26710.

1 fighting air force thoroughly lacking training or
2 time to train.^{1.} Evidence further reveals the tre-
3 mendously important problem of refueling Japanese
4 ships at sea and pointedly presents again the fact
5 that Japanese aircraft carriers did not have suffi-
6 cient radius of action to accomplish the mission
7 imposed upon them without improvised means.^{2.}

8 Even in the midst of their operations
9 there was a carefully prepared order that the fleet
10 was to be recalled from deployment and returned home
11 in the event of reaching an amicable settlement
12 before December 8, 1941.^{3.} The navy fully expected
13 that the task force deployed against Pearl Harbor
14 would be detected at least thirty to forty minutes
15 before the attack through observation of the United
16 States forces alone. And it was thought possible that
17 radar detection would be made more than an hour before
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1. T. 26719.
2. T. 26720.
3. T. 26726.

1. the attack. The Navy fully expected that before
1 hostilities commenced that proper diplomatic steps
2 would have been taken and that the United States would
3 know that a state of war existed with Japan.^{2.}

4 Thus it becomes difficult to perceive wherein
5 the Japanese Government and its navy differed from
6 comparable powers. The voluminous evidence offered
7 by both the prosecution and defense must be considered
8 to have been directed at the over-all issue of whether
9 the activities of the Navy were expressive of aggres-
10 sive motives on the part of these accused. We submit
11 the record now reveals a complete failure of the
12 prosecution to achieve its objectives -- namely, to
13 establish a conspiracy to accomplish aggressive war.

14 THE PRESIDENT: After hearing the last two
15 summations, it is clearly necessary for us to remind
16 counsel that the summations must be kept within the
17 evidence.
18

19 MR. ROBERTS: We submit, if your Honor please,
20 that we have tried in all respects to do that.

21 THE PRESIDENT: Except on the law, you can-
22 not quote the record at Nuernberg unless it is in
23 evidence here, nor can you quote the opinions of
24 statesmen, however distinguished.
25

1. Tr. 26,729.

2. Tr. 26,730.

1 The opinions of Mr. Littleton and of
2 Mr. Hoover are not in evidence, and would not be
3 admitted if they were tendered, and you know that.

4 The opinions of the two statesmen were referred
5 to in the summation read by Mr. Logan.

6 We cannot allow any statesmen to decide the
7 issues that we must decide. In any event, they did
8 not have a fraction of the evidence that we have to
9 guide them. We have been listening to evidence on
10 both sides for nearly two years. For every British
11 or American statesman who thinks as they did, there
12 may be fifty who think otherwise. We cannot be guided
13 by the opinions of statesmen. We can be guided only
14 by the evidence properly before us.

15 We decided not to interfere with the summations
16 if that could be avoided. It cannot be avoided in
17 cases like those I have just referred to.

18 MR. ROBERTS: It was my understanding that
19 the quotations referred to by Mr. Logan were all taken
20 from the record.

21 THE PRESIDENT: We have never admitted
22 opinions of that kind. I have just asked Mr. Logan to
23 tell me where he got those quotations, and he says he
24 does not know. He has to try to find them at his house.

25 MR. ROBERTS: That, of course, is something

with which I am not acquainted.

1 Mr. Blewett will continue.

2 THE PRESIDENT: Mr. Blewett.

3 MR. BLEWETT: If the Court please, this is
4 a portion of the Pacific War Phase: Japan's Military
5 Preparedness.

6 JAPAN'S MILITARY PREPAREDNESS
7 NOT AGGRESSIVE IN CHARACTER.

8 The prosecution, as was its burden, has
9 attempted to prove that these accused to further the
10 ends of the alleged conspiracy carried on by the army
11 took measures toward intensive preparations for wars
12 of aggression. It would be but logical and natural
13 for anyone, once the idea of aggressive war was thought
14 of, to contemplate the existence of a war machine pon-
15 derous and inexorable -- modern, scientific and deadly.
16 We all know that Germany had such a war machine,
17 which had been in the making since the Versailles
18 Treaty. It was kept no secret. On the contrary it
19 was paraded before the world, and for years before
20 World War II distinguished statesmen and visitors from
21 all nations were treated to a display of soldiery, tanks,
22 planes and scientifically destructive weapons never
23 before equalled in any age. It was a war machine
24 designed not for defense but for offense, a most
25

important consideration indeed here.

1 When this trial was planned those persons
2 assigned to prosecute the Japanese had but one precedent
3 to follow -- Nuernberg. It was a new field unexplored
4 hitherto by any group of nations. It was only normal,
5 therefore, for the prosecution here, before any ade-
6 quate investigation could be made to proceed on the
7 thesis that Japan, "a partner of Germany," so they
8 thought, had likewise built up a gigantic mechanism
9 designed to terrify, destroy and conquer far-flung
10 portions of the world. That was a remarkably specious
11 deduction, as we shall demonstrate.

13 They had the boast (now known as having no
14 substance) in mind, perhaps, that the peace treaty
15 would be signed in the White House; that the Pacific
16 coast would be attacked, and many other erroneous ru-
17 mors which spring from fertile imagination during a
18 war. And they had too the very honest belief, perhaps,
19 as mentioned before, that would ordinarily accompany
20 the conjuration of aggressive war -- that any threat
21 to wage offensive war must as a definite requisite be
22 accompanied or backed up by a nation armed to the
23 teeth with equipment and arms designed for long range
24 campaigns.
25

Under these mistaken suppositions the

1 Indictment was framed wherein the prosecution proposed
2 to produce competent evidence of general military
3 preparations for wars of aggression. That it failed
4 utterly to do so, and that it was completely impos-
5 sible for it to do so, is abundantly clear. But the
6 failure of the prosecution to fulfill for the Tribunal
7 the promise it undertook in the Indictment and in some
8 opening statements is not the fault of its personnel.
9 No corps of investigators ever assembled could have
10 found proof of the type required to make out a case
11 against these accused. It simply did not exist at any
12 time.

13 The prosecution was therefore delimited in
14 the scope of its material, as is manifested by its
15 dubious quality and quantity, the answering evidence
16 of the defense, and the weakness of the prosecution
17 summation.

18 The evidence, such as it is, was confined to
19 what has been proved by the defense to be matters
20 purely of national defense, and as to the purport of
21 that evidence we have no quarrel. Japan does not con-
22 tend that she neglected her national defense during
23 the period alluded to in the Indictment. We do insist,
24 however, that Japan did not increase her armaments for
25 purposes of aggression, and we maintain that there is

1 no substantial proof presented to this Tribunal that
2 she did so.

3 The prosecution labors to insist, on the
4 other hand, that it has met the burden of proof. It
5 bears the onus, as in any criminal action, to prove
6 beyond a reasonable doubt that the military measures
7 adopted by Japan commencing in the early 1930's had
8 aggression as their purpose in themselves not limiting
9 its evidence to the fact that Japan was endeavoring
10 only to maintain a safe margin of national defense.

11 It is but natural for an independent nation,
12 and a solemn duty on its leaders, to effectuate the
13 strongest possible defensive power within its capacity
14 to achieve. Only a decadent nation would do otherwise
15 when all about her were straining every resource to
16 arm and consolidate their security.

17 Subsequent to World War I most nations who
18 participated, remembering their woeful lack of prepared-
19 ness and the dangers inherent therein, pledged that
20 never should there be a recurrence of that situation.
21 It may have been slow getting under way but as time
22 passed and world conditions grew more troubled national
23 defense emerged as a paramount problem of grave national
24 consciousness in most advanced countries.
25

The United States undertook comprehensive

measures to strengthen her defenses, and her army
1 early worked out a plan for the utilization of her vast
2 economic resources, which was one direct cause for
3 her phenomenal production of war materials, and achieve-
4 ment never surpassed in all history, and the vital
5 element in the smashing victory of the allied armies.
6 Many of us here in those years, even before Hitler
7 emerged from obscurity, attended lectures for reserve
8 officers during the winter months and participated in
9 summer maneuvers. The U. S. at that time had no enemy
10 objective, as the prosecution rhetorically demands of
11 these accused, and her borders to the north and south
12 were more than friendly. Could America have then been
13 charged with preparing for aggressive war?
14

15 If the Court please, I refer to a remark made
16 by the Chief of Staff of the United States Army in
17 1931. I have the release from the War Department,
18 which has not been introduced in evidence, and I have
19 endeavored to obtain the citation of the permanent
20 record, which I have not yet obtained from Washington.
21

22 THE PRESIDENT: The summation should be con-
23 fined, of course, to the law and to the evidence
24 admitted. The opinion of the Chief of Staff of the
25 United States is quite immaterial.

MR. BLEWETT: It is not an opinion, sir.

1 It is an explanation of what the War Department was
2 going at that time in preparation for self-defense,
3 and was made to a commission--

4 THE PRESIDENT: It can only be used as evi-
5 dence, and it is not in evidence.

6 MR. BLEWETT: I shall pass over to page 3,
7 the last paragraph on the page, then, sir.

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1 Nearer Japan's homeland, its veritable
2 neighbors, China and the USSR were arming on a scale
3 of huge proportions. Russia was well into its second
4 Five-Year Plan before Japan, despite its alarming
5 financial difficulties, was able to make a feeble
6 beginning. It is well known now that there was no
7 real coordination between the High Command in Japan,
8 the government and industry until the middle of 1943.
9 For Japan to ignore completely the changing and
10 alarming world condition in those early years before
11 1941 would have been gross stupidity, and for her
12 leaders to be blind to these circumstances would have
13 cast them into moral degradation and political
14 obsolescence.

15 The prosecution throughout displays a con-
16 sistent predilection to add the seemingly obnoxious
17 term "aggressive" wherever and whenever in its
18 surmation it has occasion to refer to Japanese mili-
19 tary projects, but significantly does not point out
20 any specific evidence to prove that qualification.

21 Under certain occasions the same type of
22 armaments could be utilized for defensive as well as
23 for offensive warfare. What then, is the criterion
24 to differentiate an aggressive armament from one
25 designed for defense? In our opinion, we might adopt

two comparatively clear standards to decide the question.

The first is concerned with the comparative amount of the armaments. An armament may be designated as aggressive when it is at a certain period in a nation overwhelmingly greater in quantity in comparison to that of neighboring nations, and apparently exceeding adequate requirements for defense against possible attack from outside.

The second standard to be set up constitutes the kind or quality of weapons or ammunition contained in the armaments project. For example, if the military authorities of a nation attempt to construct a long range cannon capable of reaching the capitol of the neighboring country, or construct a fleet of super-bombing airplanes with great flying radius equipped with a sufficient number of incendiary bombs to attack and burn all or most cities and villages of the neighboring country; or again, compound some deadly destructive weapon such as an atomic bomb, then the defense system of that nation might rightly be termed to be in the nature of aggressiveness because those weapons are of no use whatever if that particular nation has no purpose in mind other than to defend her own territory.

1 With these standards as a premise permit us
2 to analyze the plans of the Japanese Army during the
3 period between 1928 and 1941 to determine whether they
4 were really aggressive. But before undertaking this
5 examination it is proper to answer that one question
6 alluded to hitherto in passing. The prosecution asks:
7 "If the (Japanese) plan were defensive, as alleged by
8 the accused, it is pertinent to ask against what nation
9 was it thought it necessary to execute defense prepara-
10 tions."^{1.}

11 In answer to this amazing query we refer
12 to exhibit 2375, which is a description of a celebra-
13 tion in Red Square in Moscow by an eminent writer
14 regarded as disinterested in the cause of either Japan
15 or Soviet Russia.^{2.} A short passage from that exhibit
16 reads:

17 "The parade of civilian workers through
18 Red Square that day was enlivened by numerous carica-
19 tures of Germans and Japanese. . ."

20 Needless to state that the Soviet Government
21 had power to stop it, if that spectacle was against
22 her trend of mind. The author further describes:

23 "In addition to the military development which
24

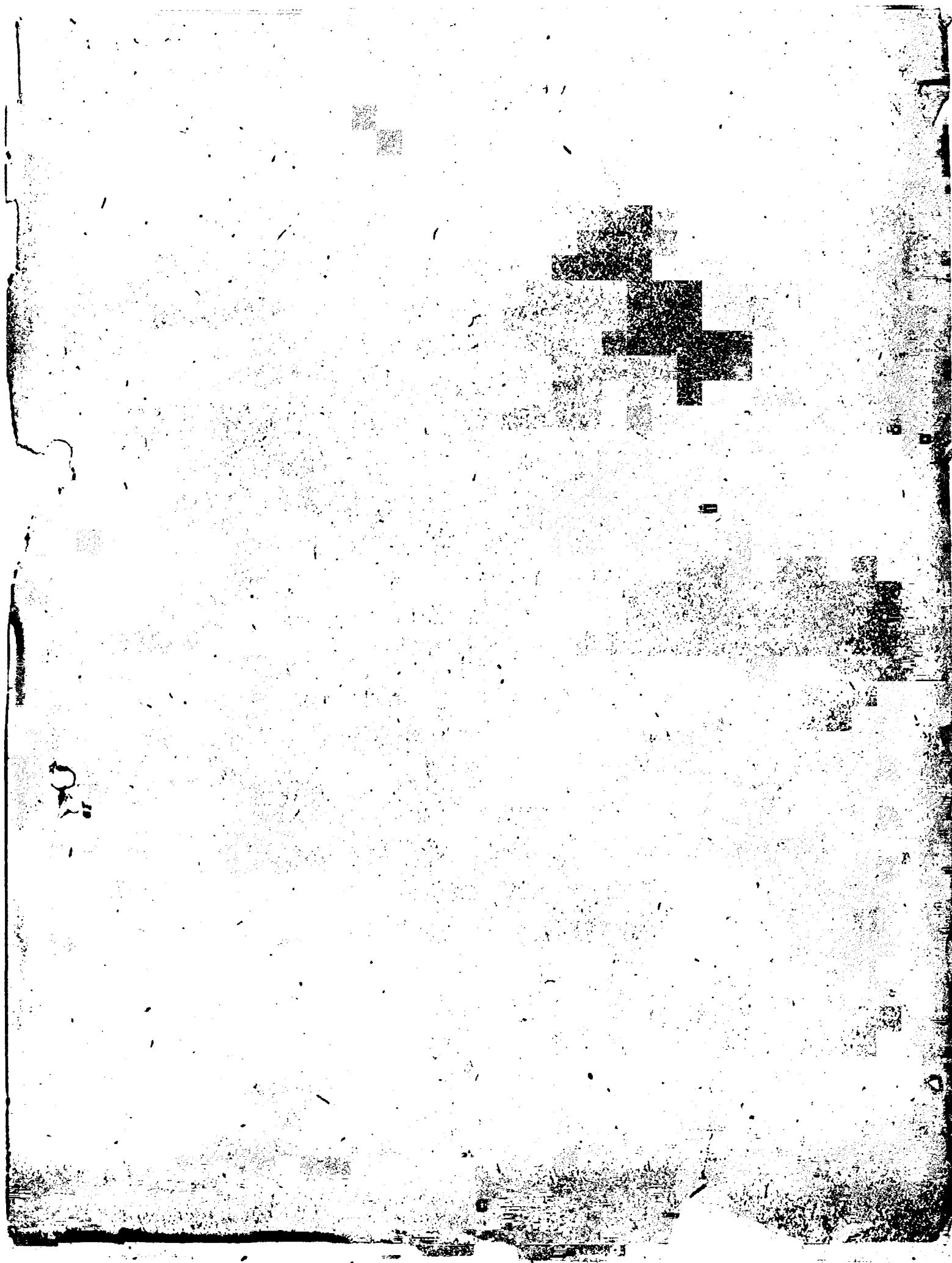
25 1. F-7, T. 39334.
2. T. 18429-30.

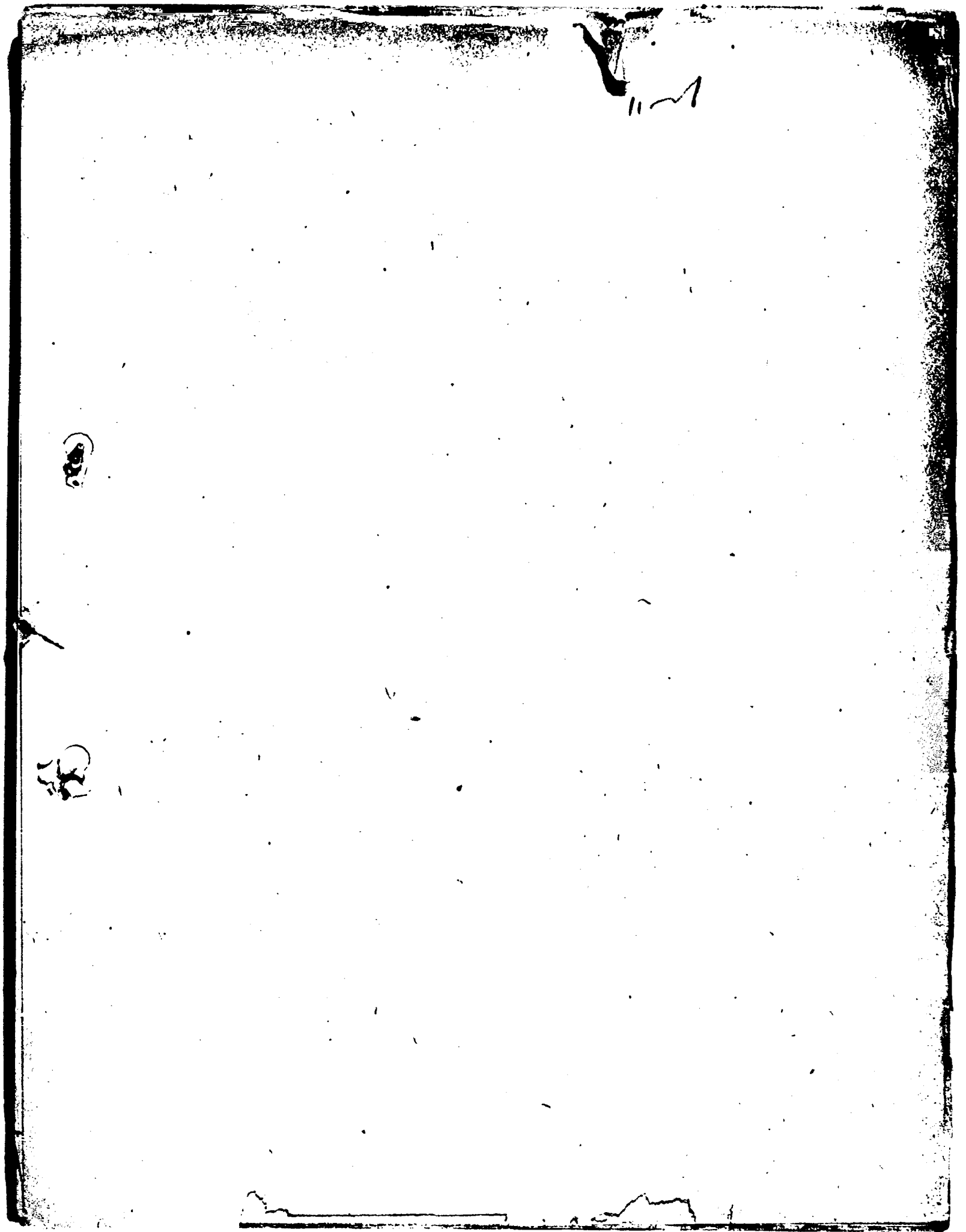
1 was obvious on all sides, the country seemed to be
2 undergoing a rapid industrialization, and the personal
3 comfort of the people was being sacrificed to the
4 development to heavy industry . . . the parade of
5 military forces through Red Square lasted from ten
6 o'clock in the morning until late afternoon . . . there
7 were contingents from the various military branches,
8 including light and giant tanks . . . and from the
9 aviation corps."

10 The spectacle witnessed by the author of the
11 article from which these quotations were taken took
12 place on 7 November 1935, and was an eye-witness
13 account of the state of affairs at a time when the
14 USSR was on friendly diplomatic terms with Japan.
15 Is it any wonder that the leaders of a nation with this
16 kind of a neighbor thought it prudent and wise to make
17 such military preparations as were within their limited
18 scope for defense against any contingency that might
19 confront their country at any time? The question put
20 by the prosecution, it is appreciated, is but at the
21 expense of thought, but there is an answer, and a
22 complete one at that.

23 THE PRESIDENT: We will adjourn until
24 half-past nine tomorrow morning.

25 (Whereupon, at 1600, an adjournment
was taken until Thursday, 11 March 1948, at 0930.)





11 MARCH 1948

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Thursday, 11 March 1948

- - -

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART
McDOUGALL, Member from the Dominion of Canada, not
sitting from 0930 to 1200.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All accused are present except
4 HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are repre-
5 sented by counsel. The Sugamo Prison surgeon certi-
6 fies that they are ill and unable to attend the trial
7 today. The certificate will be recorded and filed.

8 Mr. Blewett.

9 MR. BLEWETT: If the Tribunal please, yester-
10 day I was precluded by a ruling of the Tribunal from
11 reading in my summation, to illustrate an important
12 issue, a portion of a statement made by a high officer
13 of the United States Army regarding U. S. war prepara-
14 tions.

15 THE PRESIDENT: Because it was not a statement
16 of law but a statement of fact of which there was no
17 evidence. Therefore it could not properly be read
18 as part of the summation. There is no occasion to
19 argue it. I have stated the facts. They cannot be
20 controverted and that is the end of the matter.

21 MR. BLEWETT: If it please the Tribunal, we
22 are not without precedent, if we need it, for the in-
23 sertion of examples or illustrations not specifically
24 in evidence.
25

 THE PRESIDENT: We have always protested

1 against those things. We did only yesterday afternoon
2 before your summation came on.

3 MR. BLEWETT: Selecting but one part of the
4 prosecution's summation, the introductory statement
5 of the Chief Prosecutor, we find in thirty pages four
6 quotations.

7 THE PRESIDENT: You yourself raised the ques-
8 tion whether this particular matter should be read
9 by you. You had heard what we had said about matters
10 read by Mr. Logan, and on the point raised by you we
11 gave the only possible decision, and I have just
12 repeated it. If there is anything in the Chief
13 Prosecutor's address that is not law and which is not
14 supported by evidence, we will disregard it.

15 MR. BLEWETT: I submit to the ruling, your
16 Honor. But I simply want to point out that in our
17 practice we have some latitude in arguing to a jury.
18 Despite--
19

20 THE PRESIDENT: But this is not a jury.

21 MR. BLEWETT: Well--

22 THE PRESIDENT: We suspect that at times
23 attempts have been made to use this Tribunal for
24 political and propaganda purposes, but we have en-
25 deavored to prevent that.

MR. BLEWETT: My purpose, sir, was to explain

1 the reason for my use of that portion in my summa-
2 tion that was to me an apt illustration, one of the
3 best I could find, as to the comparative activities
4 between Japan and the United States. That is what we
5 do continually before our courts at home, even our
6 appellate courts.

7 THE PRESIDENT: Our simple duty is to find
8 the facts from the evidence before us and to apply
9 the law to those facts, and a summation which goes
10 beyond that is useless to that extent. I am glad
11 you gave us the opportunity to make plain our posi-
12 tion, because things have been said in the course
13 of summation not covered by the evidence and not law.
14 Now we make plain what our position is. It has al-
15 ways been as I stated; it always will be as I stated.

16 Proceed to read the rest of your summation,
17 Mr. Blewett.

18 MR. BLEWETT: I just want to say, sir --

19 THE PRESIDENT: I will not listen to any
20 further representations on this matter. Proceed to
21 read the balance of your summation.

22 MR. BLEWETT: I think I reached page 13.
23 I start, if the Tribunal please, at the second para-
24 graph, on page 13:
25

1 Going back to the volume of Japanese mili-
2 tary armaments, let us test whether it was in ex-
3 cess of her needs, or, it may be more correct to say,
4 her minimum requirements.

5 First of all, it is well to again point out
6 that the numerical total strength of the Japanese
7 Army was always far below the armies of China and the
8 U.S.S.R. In the earlier years of the 1930's the
9 Soviet Army in the Far East had aimed at the mainten-
10 ance of three times the strength of the Kwantung Army,
11 but subsequently the increased number of her planes
12 and tanks tended to enhance further the ratio of the
13 Soviet fighting power against Japan.^{3.}

14 The prosecution harps insistently and tire-
15 lessly on the five year plans allegedly drafted by
16 the Japanese Army,⁴ in order to attempt to prove the
17 aggressive character of her armaments, notwithstand-
18 ing that the witness OKADA, Kikusaburo, who partici-
19 pated in drafting those plans, testified that the
20 Japanese authorities concerned were forced to conclude
21 that Japan also should at least endeavor to reach
22 one-half of the Soviet Union's planned production at
23 the time of the conclusion of its (Soviet) third five
24

25 3. Tr. 23,006

 4. F-2, tr. 39,328

1 ⁵
 1 year plan.

2 As to the production of steel, it has been
 3 disclosed that the production in the U.S.S.R. amounted
 4 to 17,700,000 tons in 1937,⁶ while in Japan the demand
 5 for steel by the Japanese Army four years later (1941)
 6 was for 1,000,000 tons only.⁷

7 It is contended by the prosecution that
 8 Japan endeavored to achieve a peacetime production
 9 of at least 10,000 planes by the year 1939,⁸ but that
 10 is undoubtedly a misquotation of the document; 10,000
 11 planes was the desired capacity of the workshops and
 12 the equipment and not the estimated annual production
 13 of planes. Citing the passage in the record, it reads:

14 "(1) If an equipment capacity be maintained
 15 so as to make it possible to cope with a peace-time
 16 operation of 10,000 planes, the following mobiliza-
 17 tion will, even in the case of a peace-time actual
 18 demand of 3,000 planes, make the capacity reach close
 19 to an annual production of 2,000 planes from and
 20 after the 8th month, and over 2,000 planes from the
 21 10th month."⁹

22
 23 However, the above-mentioned figures of two
 24 or three thousand planes annually were but theoretical,

25 5. Tr. 18,274-5
 6. Tr. 18,274
 7. Tr. 18,275

8..F-20, tr. 39,351
 9. Tr. 8,375

1 based upon the barest minimum demands, and compared to
2 some other nations a mere pittance. But not even
3 that pitifully meagre supply was forthcoming. The
4 actual annual production of aircraft in Japan for
5 army purposes was:

6 1936.....522

7 1937.....745

8 1938.....1500

9 1939.....1450

10 1940.....1390

11 1941.....1380

12 If these beggarly figures be termed over-
13 whelmingly great, and the prosecution attributes this
14 scanty number of outmoded planes to be of the character
15 of military preparation for aggressive wars, it has
16 labored mightily and brought forth not even a mouse.
17 To American counsel who represent a nation which pro-
18 duced 50,000 planes or more in one year it is an
19 allegation which is not ludicrous but downright tragic
20 in a case where the lives of conscientious public
21 officials are at stake. No one but a Don Quiyote
22 would start out to conquer the world with a handful of
23 aircraft -- not in this day and age.

24
25 10. Tr. 18,293.

1 With a six-year plan looking towards the
2 completion of armaments for national defense starting
3 in 1937 the Japanese Army planned the storage of oil
4 for the first time. According to this plan a mere
5 36,000 kilolitres was arranged to be stored until
6 1943.¹¹ Certainly the storage of this small quantity
7 in a country where indigenous oil production is
8 negligible does little to bolster the case of the
9 prosecution that Japan's military preparedness program
10 was aggressive.

11 From the foregoing examination of Japan's
12 preparedness program we represent that the only con-
13 clusion that can be fairly deduced is that armaments
14 during the years preceding the outbreak of the Pacific
15 War were not excessive to the point where it can be
16 maintained that they tended to be aggressive from the
17 standpoint of volume -- a test that is beyond dispute.

18 As indicated previously, we shall now approach
19 the subject of Japan's preparedness objectives from
20 the viewpoint of the quality or kind of weapons de-
21 signed to be constructed for the army. No evidence
22 has been tendered that the Japanese army had any
23 design for the manufacture of any type of long range
24 cannon, or plans to construct a class of bomber of
25 wide radius comparable to the B-29, nor has any evi-

1 dence been proffered dealing with an atom bomb.

2 On the contrary, the type of armaments which
3 ¹² were designed to be supplied were rifles, light and
4 heavy machine guns, heavy tanks and ordinary airplanes,
5 all revealing none of those special characteristics
6 or functions so fundamental for purposes of aggression.

7 At this juncture, when the 5-year plan of
8 the Japanese army is considered, the defense feels
9 it obligatory to make some comment. The prosecution
10 appears to be adamant in its insistence that the fact
11 that the purpose of the 5-Year Plan was to be accom-
12 plished by the end of the 1941 fiscal year that it was
13 therefore connected closely with the outbreak of the
14 Pacific War. ¹³ In the cross-examination of the wit-
15 ness OKADA, Kikusaburo, ¹⁴ it endeavored to connect the
16 two, but the witness answered that the year referred
17 to in the plan meant 1942 and not 1941. Further ques-
18 tioning gave the prosecution no help. The matter can
19 be simply met.
20

21 In Japan a fiscal year begins on the 1st of
22 April and ends on 31 March the year following. This
23 is stipulated in Article I of the "Law of Account,"
24 and is very well known to all Japanese. The end of
25

12. Ex. 842, Appendix 7.

13. F-5, tr. 39,331

14. Tr. 18,331

1 the 1941 fiscal year was 31 March 1942, and not
2 December 1941. That is why the witness OKADA repeat-
3 edly answered that the plan terminated in 1942.¹⁵

4 Therefore, the final fiscal year of the plan had noth-
5 ing to do with the beginning of the Pacific War.

6 The indication that 1942 was to be the first year of
7 war in the plan shows nothing more than the theoretical
8 denomination of the hypothetical first year of war
9 according to the said five year plan.¹⁶ Really the

10 1942 fiscal year, that is, from 1 April to 31 March
11 1943 is the first year of the war, regardless of whether
12 the war happens to begin with an offensive action or
13 a defense, according to the assumption of the 5-year
14 plan. At the time of actual war in the Pacific the
15 said fiscal year had been the second year after the
16 hostilities.

17 Beyond the unalterable fact of the non-exist-
18 ence of any specially designed offensive weapon in
19 the entire Japanese national defense program, there
20 are other factors to prove that Japan did not antici-
21 pate warfare in the south western Pacific against the
22 United States and Great Britain.

23
24 It will be recalled that defense witness

25
15. Tr. 18,331-32
16. Tr. 18,330

1 NISHIURA, Susumu, who from October 1931 to August
2 1941 was in charge of the preparation of war materials
3 in the War Affairs Section, Military Affairs Bureau of
4 the War Ministry. testified without challenge that,
5 as Japan's attention had been directed to operations
6 in cold, barren regions on the continent, no war
7 materials had been prepared for use in the South Sea
8 areas.¹⁷ We represent with sincere respect that the
9 unimpeached testimony of this witness should be accord-
10 ed grave consideration by the members of the Tribunal.
11 Armies do strange things, but it is very doubtful if
12 any army, especially one cognizant of tropical con-
13 ditions, would outfit its troops with fur coats for
14 jungle warfare.

15 Defense witness YOSHINAGA, Yoshitake, who
16 from 1936 to the end of the war served at the Technologi-
17 cal Headquarters of the army, testified unqualifiedly
18 that the army's technological study had been concen-
19 trated on operations against the U.S.S.R., that is,
20 on those operational plans related to extremely cold
21 regions, and that the problem of the adaptability of
22 weapons in tropical climates did not come up for con-
23 sideration until in August 1941, when some army en-
24 gineers were dispatched to Formosa in order to conduct
25

17. Tr. 26,949 et seq.

18.
1 various tests there on weapons. He further testi-
2 fied, without contradiction, that it was late in
3 October of the same year that the Tropical Test
4 Chambers was established. The inference to be drawn
5 from the testimony of these two defense witnesses is
6 amply translucent. This evidence when supplemented
7 with what has gone before is proof beyond even the
8 shadow of doubt that Japan did not plan, prepare or
9 even anticipate the war in the south.

19
10 In its summation the prosecution refers
11 to the testimony of NISHIURA, and attempts to confirm
12 its contention that only 40 per cent of the budget was
13 devoted to the China hostilities - the balance going
14 for expansion of armaments. But the prosecution is
15 in error in its hypothesis as the statement of the
16 witness does not concern the budget but explains only
17 where the munitions and oils were kept, and by so doing
18 added further substantial proof to the defense conten-
19 tion that Japan had no intention and had made no pro-
20 vision for a campaign in the south.

22 In its argument on the testimony of this
23 witness (NISHIURA) the prosecution refrains from in-
24 cluding Formosa and French Indo-China, the exact word-

25
18. Tr. 26,965
19. F-35, tr. 39,369

ing being:

"The distribution of ammunitions and aviation gasolines in the supplies for operations under the direct control of General Headquarters about the spring of 1941":

AMMUNITIONS

Manchuria	20%
China Republic	30%
Japan Proper	50%
Formosa and French Indo-China..	0%

AVIATION GASOLINE

Manchuria	16%
China Republic	4%
Japan Proper	80%
Formosa and French Indo-China.	0%

The statement convincingly reveals, with the additions which we have supplied, that by providing no storage of munitions in the southern part of her territory or in the southern overseas area, Japan had no conceived purpose of waging a war in the southwestern Pacific.

It is another matter entirely, if the question should arise at this time, whether the prosecution

1 succeeds in proving an aggressive policy on the part
2 of the Japanese Government within the period covered
3 by the Indictment, especially from the Manchurian
4 Incident down to the late fall of 1941, by citing
5 other documents or witnesses concerning Japanese ad-
6 ministrative action, all of which will be rebutted
7 by defense counsel individually; as far as the army
8 program of national preparedness is concerned there
9 is not even a scintilla of evidence in the entire
10 record to indicate that any portion of that prepara-
11 tion bears even the remotest trace of aggression.

12 The witness Liebert has been extolled by the
13 prosecution as the paragon who stigmatized the entire
14 Japanese program of national defense as aggressive.
15 He, who from his office in the agriculture department
16 in Washington, knew little of the aims of Japan during
17 a period of world industrial convulsion, nevertheless
18 calmly proceeded to cover the entire industrial evolu-
19 tion of Japan after a few months study of selected docu-
20 ments and inquiry from newly staffed governmental
21 agencies. While his opinions are ignored by the Tri-
22 bunal, and his facts have been addled by other defense
23 counsel, we, to avoid any misunderstanding, feel it a
24 proper function to acquaint the Tribunal and the prose-
25 cution with the truth concerning the increase in

1 Japanese budget figures during the years in question.

2 In its summation,²¹ the prosecution cites
3 the figures supplied by the Japanese Finance Minister
4 concerning the Military Budget and its ratio to the
5 general Budget of Japan, challenging the credibility
6 of the figures set forth by the defense witness
7 ISHIBASHI, Tanzon. The prosecution seems to have
8 overlooked the distinction between this budget and
9 the settled account in the Japanese financial system.
10 The figures cited by the witness ISHIBASHI are also
11 those supplied by the Finance Ministry, but they are
12 not those of budget; they are those of the settled
13 account. This should be unerringly proved by the
14 words "Sources: Finance Ministry's Announcement:
15 the settled account," affixed to table 19, List of
16 the Annual Military Expenditure, which in turn is
17 cited in line 24 of the transcript (p. 25,428) and
18 line 15 of the transcript. (P. 2430). Why then does
19 there exist differences between budget figures and
20 that of settled account?
21

22 Japan adopted the system of fiscal year
23 account. Budget is only an estimate of expenses
24 expected to be needed, as everyone knows, during the
25 next fiscal year, and approved by the Diet at the
21. F-32, Tr. 39,367.

1 end of the previous year. Actual amounts of money
2 to be spent are bound to be within the limit of the
3 budget figures. In practice the amounts defrayed
4 are under that limit. The settled amounts are the
5 sums actually spent, and audited by the competent
6 authorities. Article LXXII of the old Constitution
7 stipulated:

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"The final account of the expenditures and revenue of the state shall be verified and confirmed by the Board of Audit, and shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board."²²

That was the procedure to reach "settled account." The system is somewhat different from the usage of "appropriation" in England and America. It is evident that it does not make sense to cite budget figures for the purpose of trying to prove what has been the actual sum spent by any department of the Japanese Government during a given period. The figures used by the witness, ISHIBASHI, are unquestionably suitable and proper for the purpose of investigating the comparative amount defrayed for armaments purposes during the consecutive years involved.

In the foregoing we have met generally the contention of the prosecution relative to the army for alleged aggressive warfare. We shall now proceed to analyze military strategy as it may appertain to the broad program of Japan's policy of national defense to determine if in any particular it was directed at wars of aggression.

Formulating theories of a mystery-story

1 pattern, and having recourse to them inferentially,
2 the prosecution has evolved what they purport to be-
3 lieve is an over-all operational plan formulated by
4 the Japanese Government and the High Command for an
5 offensive war against the United States, Great
6 Britain and Holland.

7 In its summation,²³ the prosecution boldly
8 declares that prior to August 1941 Japan had a com-
9 plete plan for an aggressive war against those
10 countries. Though the document setting forth this
11 plan, it says, is missing it is possible to recon-
12 struct the strategic plan completely. Then, quoting
13 the record pertaining to its evidence of table-top
14 maneuvers, which were carried out at the Total War
15 Research Institute in the same month of the same
16 year, it describes what it argues is the aggressive
17 plan of Japan including domestic policy, diplomacy
18 and strategy.

19 According to its theory, the Total War Re-
20 search Institute indulged in "research and study in
21 order to test the validity of plans already formulated
22 so that they might be perfected, and to lay the
23 ground-work for the preparation of further plans to
24 meet new conditions" brought about by the execution
25
23. F-40, Tr. 39,377

of the first plan. That is to say, the Total War
1 Research Institute was responsible for testing the
2 first plan. Therefore, the prosecution concludes
3 smugly, the record of these table-top maneuvers,
4 being good, sound secondary evidence, indicates well
5 the contents of the first plan, which was the object
6 of the test.²⁵

7 The only trouble with this ingenious infer-
8 ence of the prosecution is that it is utterly fallac-
9 ious. Several grounds which should constitute its
10 premise are assumed dogmatically without evidence.

11 - Firstly, the fact that the Total War Re-
12 search Institute was authorized to test the first
13 plan, which was decided secretly either by the Govern-
14 ment or by the Supreme Command, or, by both, is not
15 proved. Actually, in the Official Organization of
16 the Institute on 10 October 1940, which is quoted by
17 the prosecution, only two matters -- basic study in
18 total warfare and the education of students -- are
19 mentioned as the objects of the Institute.²⁶

21 Secondly, the prosecution did not produce
22 evidence that in the execution of the table-top
23 maneuvers in August 1941 the plan of operations and
24

- 25 24. Tr. 39,381-2
25. Tr. 39,382
26. Tr. 39,382

1 the diplomatic policy, which were in possession of
2 either the Government or the Supreme Command, were
3 shown for the maneuvers. Although there is some
4 evidence²⁷ that the Research Institute could utilize
5 secret figures regarding statistics, etc., there is
6 no evidence that the strategic or other all-over
7 secret plan decided upon by the Government or Supreme
8 Command had ever been shown to the Institute. Such
9 plans, if any, must of necessity be top secret in
10 all countries. It is beyond all imagination that
11 such confidential matters perhaps affecting a nations
12 security could be pawed over by a group of students²⁸
13 in a course of study of a semi-public nature.

14 Thirdly, if the plan prepared by either the
15 Government or the Supreme Command had actually been
16 tested in those maneuvers the results should have
17 been submitted to either the Government or the Supreme
18 Command. Nevertheless, the prosecution's witness,
19 HORIBA, testified that no such report had ever been
20 made.²⁹

21
22 In view of the above overwhelming, specific
23 evidence to the contrary it is utterly impossible to
24 assume the existence of the so-called first plan.

25 27. Tr. 3833 and 27,069
28. Tr. 8856
29. Tr. 8843

1 That such a plan ever existed is irreconcilable with
2 the facts.

3 It could be that the prosecution proceeded
4 on its theory as a result of its knowledge of the
5 Rainbow Operation and the Orange Operation in the
6 possession of the Staff of the United States Naval
7 Operations. Such an idea is plausible, and, no
8 doubt, lead the prosecution to conjecture that Japan
9 also had a similar "over all strategic plan." However,
10 there was no such plan in Japan. What had been con-
11 ceived by the Japanese High Command was only the so-
12 called "Annual Strategic Plan" against the United
13 States. Although the text of this plan was really
14 lost by fire,³⁰ defense witness TANAKA, Shinichi,
15 explained that its contents were defensive, as well
16 as negative, and that it was not so comprehensive as
17 to include matters of diplomacy, domestic policy, etc.,
18 as set forth in the record.³¹

19 In this connection it is to be recalled that
20 at the Investigation Committee of the Privy Council
21 on 26 September 1940 TOJO in answer to an interpo-
22 lation said:

23 "The manpower needed by our Army in a war
24 against America would be comparatively small in
25

1 number,"³² meaning that he replied pursuant to the
2 text of this "Annual Strategic Plan Against the
3 United States," and with that kind of a defensive
4 plan in mind. There is no other significance in the
5 answer whatsoever unless to emphasize more strongly
6 the small scale and negative nature of the plan it-
7 self.

8 Again, it is beyond belief that there exist-
9 ed in Japan two plans, the annual strategic plan and
10 a so-called "first plan," imagined by the prosecution.
11 The prosecution seems to take for granted that the
12 term "total war" is synonymous with the undefined
13 term "Aggressive war," and proceeding on this self-
14 made but erroneous hypothesis considers that it can
15 directly establish the existence of a plan for aggres-
16 sive war by presenting evidence concerning research for
17 total war. It was made abundantly clear in the light
18 of experience in World War I that when a modern war
19 breaks out among great powers, whether that war be
20 defensive or offensive, it is bound to develop into
21 total war. Consequently, and very properly so, all
22 countries valuing their existence were engaged in
23 research on total war. The only difference in this
24 respect between Japan and other countries is that

1 governmental and business circles, including the
2 Courts. There does not appear in substance to be
3 any great dissimilarity between that research group
4 and numerous commissions, councils and bureaus
5 formed in all countries for the same purpose after
6 the first world war. The volume of testimony intro-
7 duced here and its tenor concerning Japan's inquiry
8 of the subject seems to be entirely out of all
9 proportion to its importance. At any rate it has
10 been definitely and firmly established that the
11 institution had no voice, direction or concern with
12 the actual policies of the Government nor in any
13 military operations connected with the Supreme Com-
14 mand,³⁵ so the prosecution's summation argument,³⁶
15 that either one decided on such a comprehensive plan
16 is immoderately lacking in conviction and merit.
17

18 Still aggressively persistent, which we
19 admire in a prosecution however absurd its challenge
20 may be, it alleges further that a similar over-all
21 comprehensive plan had existed prior to January 1941,
22 citing exhibit 852, and stating: "although the
23 entire plan is not available, fortunately a portion
24 of the plan kept in the Ministry of Finance has been

25
35. Tr. 8346-8851-27,060-27,068
36. Tr. 39,377-79

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24 of the plan kept in the Ministry of Finance has been
25

35. Tr. 8346-8851-27,060-27,068

36. Tr. 39,377-79

presented to the Tribunal."³⁷

1 This is a record of the communication in
2 which the Chief of the Intendance Bureau of the War
3 Ministry and the Chief of the Finance Bureau of the
4 Finance Ministry discussed from around January 1941
5 regarding the printing of military notes to be used
6 in the South Seas area; it being obvious that in
7 the event of military occupation that might follow
8 a war, whether defensive or offensive, the use of
9 such currency would be indispensable. It cannot be
10 precisely inferred from the fact that responsible
11 Government officials, who were imposed with the
12 duty of anticipating every contingency, had pro-
13 ceeded with the undertaking at an early date was
14 evidence of a comprehensive aggressive plan devised
15 by the Government and the Supreme Command. The
16 Government had numerous organs, each with its own
17 particular function, not necessarily connected with
18 each other. It occurs, not infrequently, that one
19 of such organs takes a hypothetical step which is
20 incompatible with the policies of other sections of
21 a governmental organ. Therefore, from the attitude
22 of a section in dealing with its business one cannot
23 prove the existence of a general policy on the part
24 of a section in dealing with its business one cannot
25 prove the existence of a general policy on the part

37. Tr. 39,374

of the Government. Defense witness YOSHIDA, Tosuke,
1 has testified concerning military notes to be used in
2 the South Seas area.³⁸ Comparing his testimony with
3 exhibit 3026,³⁹ it is easily recognizable that even
4 as late as the end of October 1941 the printing of
5 military currency meant nothing more than a precaution-
6 ary step "in the eventuality of the outbreak of war."

7 It has been repeatedly proved in this case,
8 both by defense and prosecution, that in Japan all
9 operational plans were to be decided by the General
10 Staff;⁴⁰ administrative matters by the Cabinet, and
11 matters involving both at the Liaison Conference or
12 at an Imperial Conference. In order to prove that
13 Japan was planning an over-all aggression during the
14 period from January to August 1941, as charged, one
15 must first of all prove that the General Staff, the
16 Cabinet, the Liaison Conference or the Imperial
17 Conference had decided upon such a plan. We submit
18 that the prosecution at no period in the case pre-
19 sented that requisite proof.

21 The prosecution also alleges that Japan's
22 plan for aggressive war dates back to 7 August 1936,⁴¹
23 inferring this from the "Basic Principles of National
24

25 38. Tr. 26,971
39. Tr. 26,980

40. Tr. 17,550-51
41. Tr. 39,326

1 Policy" adopted at the Five Minister's Conference
2 of the HIROTA Cabinet. In citing this policy, the
3 prosecution contends that the words "national defense"
4 should be read "war." That, however, would not be a
5 fair interpretation of the language used in the docu-
6 ment. In those days, as has been referred to herein,
7 and which is known universally, there was no self-
8 respecting nation in the world which did not consider
9 national defense the most urgent affair of the state.
10 If we admit this allegation of the prosecution we
11 would be compelled to brand as aggressors all the
12 independent countries of the world, amounting to more
13 than sixty. "National defense" mentioned in the "Basic
14 Principles of National Policy" was identical with
15 the case in most countries, of a purely defensive
16 character, as is clear from Paragraph 3 which reads:
17 "in order to eradicate the Soviet menace in the North
18 and at the same time to prepare against Britain and
19 America in carrying out these policies, we
20 would be careful to have friendly relations with other
21 countries." ⁴² Consequently, it is convincingly appar-
22 ent that the basic policy as formulated by reason of
23 the awareness of the actions of other countries was no
24 plan for war at all, much less an aggressive war. It
25 42. Tr. 2727-8

1 only emphasized the mission which Japan alone was
2 willing to undertake; to guarantee peace in Asia in
3 view of the then prevailing world policy of other
4 Powers.

5 The whole sum and substance of the situation
6 is, therefore, that in examining the world condition
7 and the special circumstances in East Asia after
8 World War I the Government, the Diet and the general
9 public of Japan had since 1935 or 1936 become con-
10 scious of the necessity of strengthening national
11 defense for the sake of the self-existence of Japan,
12 as well as by reason of her responsibility to main-
13 tain peace in East Asia. But the fantastic idea that
14 these two essentials be achieved by opening a war
15 against the United States, Great Britain and the
16 Netherlands never was contemplated. Simply on its
17 face the contention is so wispy we wonder at the
18 tenacity which launched it. Assuredly it cannot be
19 seriously reflected upon in this inquiry.
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The idea of opening a war against these
1 countries, in self-defense, however, was forced upon
2 the minds of the Japanese people in the Fall of 1941,
3 and not before, as the defense has proved. At that time
4 drastic acts by these nations against Japan had spread
5 over a long period, continually growing in intensity
6 and apprehension until finally culminating to a point
7 where Japan had to make a decision. The plans then
8 conceived for the first time, as discovered by United
9 States Army investigations, disclose that the Japanese
10 planned a purely defensive war, and that the Army, which
11 is charged with a long range and stupendous expansion
12 in its southwest campaigns, carried out these operations
13 with dangerously small forces. It is affirmed that the
14 early conquests were accomplished by a mere thirteen
15 divisions, 1175 land planes, 475 carrier planes, plus a
16 handful of marines. By juggling these forces strateg-
17 ically Japan created the impression of much greater
18 strength. This, with the foregoing, is indicative of
19 Japan's hasty attempt at meeting the issue pressed upon
20 her. The prosecution in its summation finally gives up
21 the struggle by honestly admitting, "After November 5
22 (1941) full scale preparations were launched."⁴³
23

24 It is submitted that concerning these accused
25 43. F-50, Tr. 39,391

1 who had official responsibility for the protection and
2 existence of their nation, the proof fails completely
3 to brand them as aggressors.

4 Mr. Lazarus will continue.

5 THE PRESIDENT: Mr. Lazarus.

6 MR. LAZARUS: If the Tribunal please.

7 THE PRESIDENT: We express the hope that
8 this summation and those that follow in the individual
9 cases will be confined to the law and to the evidence
10 admitted.

11 MR. LAZARUS: Mine is exclusively on the
12 evidence, Mr. President.

13 MR. SUTTON: May it please the Tribunal, the
14 summation, which was received by the prosecution late
15 yesterday afternoon, upon a hurried examination reveals
16 that it contains therein what purports to be quotations
17 from evidence rejected and from evidence not offered.

18 THE PRESIDENT: Point out those passages to
19 Mr. Lazarus, please.

20 MR. SUTTON: Shall I point them out at this
21 time, or hand to the Tribunal a memorandum?

22 THE PRESIDENT: You may be able to point them
23 out during the first recess.

24 MR. SUTTON: None of these, if it please your
25 Honor, appear, as I recall, within the first fifty pages

of the summation.

THE PRESIDENT: Yes, Mr. Lazarus.

1 MR. LAZARUS: (Reading) Although the prosecu-
2 tion has named the accused, General HATA, Shunroku, in
3 a majority of the fifty-five counts in the Indictment,
4 the twenty months of trial have revealed a tremendous
5 variance between the charges made against this accused
6 and the actual evidence produced by the prosecution.
7

8 Because of this variance and because this
9 accused has been mistakenly named in some counts in
10 the Indictment, and because of our unchallenged state-
11 ment (¶. 16,319 and 16,320) that the evidence shows
12 that the wrong HATA is named in the Russian counts in
13 the Indictment instead of Hikosaburo HATA, who was
14 Chief of Staff of the Kwantung Army when that Army was
15 taken prisoner by the Russians, and which HATA was not
16 produced here although the Tribunal issued a subpoena
17 for him at our request, we must look elsewhere than
18 the Indictment and the evidence itself to determine
19 what the prosecution claims, so that we may make an
20 intelligent summation to assist the Tribunal in its
21 deliberations. We shall, therefore, as we did in
22 General HATA's individual defense, look to the prosecu-
23 tion's answer to our motion for dismissal, wherein the
24 prosecution sets forth its claims as to what it had
25

1 proven in its case-in-chief against HATA, and we will
2 show the Tribunal that we have met and have completely
3 overcome all issues raised by the prosecution against
4 this accused.

5 Mr. Comyns-Carr's answer to our motion for
6 dismissal (pages 16,826 to 16,832 of the Record) sets
7 out fully all the evidence which, the prosecution con-
8 tends, applies to the accused HATA. A reading of these
9 pages reveals the amazing fact that in only three places
10 in all these pages does the prosecution state that HATA
11 himself took any action or any part in the matters
12 therein set forth. Throughout the pages it can be seen
13 that the alleged evidence against the accused HATA is a
14 recitation of actions done by others, events in which
15 it is not contended that HATA took part.

16 Relying on the sound law enunciated by the
17 President during these proceedings, that unless the
18 accused himself were connected by evidence in some
19 manner with the actions taken by others in the government
20 while he was a member of that government the Court would
21 not hold the accused responsible for such actions, we
22 will not take up the time of this Tribunal by answering
23 all the far-fetched evidence with which the prosecution
24 in these pages has sought to connect the accused HATA.
25 We, therefore, will address ourselves only to those

1 matters which the prosecution itself has claimed direct-
2 ly involve the accused by his own acts.

3 General HATA is accused of having participated
4 in the overall aggression of Japan in three different
5 ways. (1) That he carried on aggressive war in China at
6 two different periods of time as commander of various
7 armies in China; (2) As Minister of War in the ABE
8 and YONAI Cabinets, he helped determine the national
9 policy and worked on plans and preparations for aggress-
10 ive war during that period; and (3) That he was one of
11 the prime movers in the overthrow of the YONAI Cabinet,
12 thus giving new direction and expansion to the entire
13 conspiracy. Lastly, the accused is charged with respons-
14 ibility for the alleged atrocities committed by Japanese
15 soldiers in China during the times that he commanded the
16 several armies in China. This is the sum total of the
17 evidence the prosecution alleges it has adduced against
18 the accused HATA and we will now show, point by point,
19 that the prosecution has completely and totally failed
20 to prove these allegations.

21 Point 1. "That he carried on aggressive war
22 in China at two different periods of time as commander
23 of various armies in China." From his personal record,
24 the Tribunal, of course, knows the accused HATA has been
25 a life-long soldier. Once his country became involved

1 in a war, it was absolutely beyond his province to seek
2 first to determine the nature of the war before serving
3 his country as a soldier. This Tribunal is well aware
4 of the prison terms meted out in allied countries to
5 conscientious objectors, members of certain religious
6 sects, whose tenets forbid them to bear arms even in
7 defense of their own country. How much stronger, then,
8 is the duty imposed on a man who has been trained and
9 supported all his life by his country for just that
10 occasion -- the outbreak of war. Nowhere in all the
11 recorded history of man and what is more important to
12 us, in the long record of this Tribunal, has it any-
13 where been suggested that the profession of arms is
14 dishonorable or that a life-long soldier must first
15 determine whether the war in which his country is engaged
16 is an aggressive war or not, for fear that should his
17 country lose the war, he will then be accused of, and
18 tried for, carrying on aggressive war as commander of
19 an army. And the duty to fight without question is no
20 less strictly imposed on a man who because of education
21 and ability holds high rank in his country's armed forces
22 than on the civilian who is drafted to fight. Nowhere
23 in the constitution of any country is there a provision
24 that each individual may determine for himself whether
25 or not he will support his country's war effort.

1 We are still speaking now of the first point
2 that HATA "carried on aggressive warfare in China at
3 two different periods of time as commander of various
4 armies in China." We shall take up and answer later
5 the second point, with reference to his actions as War
6 Minister. The Record shows (exhibit 102) that at the
7 outbreak of the China Incident on 7 July 1937 the
8 accused HATA was commander of the Japanese Army Unit
9 on Taiwan (Island of Formosa). That exhibit shows HATA
10 had held that position for a year prior to the outbreak
11 of the Incident, hence could have had no connection of
12 any nature whatsoever with the outbreak of the affair.
13 As Mr. Comvns-Carr says (T. 16,826-7) as he begins to
14 outline the prosecution's position with reference to
15 HATA, "After serving for many years in the army, the
16 accused at the time of the outbreak of the Marco Polo
17 Bridge Incident was Commander of the Formosan Army."
18 Thus, the prosecution openly admits that although HATA
19 is named in Counts dating back to 1928, their evidence
20 against him does not begin until late in August 1937,
21 some seven weeks after the outbreak of the China
22 Incident, when he left his Formosa post and went to
23 Tokyo to become Inspector General of Military Education
24 (exhibit 102). That is HATA's first position of impor-
25 tance in the Japanese Army and, we stress again, was

1 not assumed until seven weeks after the beginning of
2 the China affair. The prosecution clearly, it seems
3 to us, absolves HATA of any connection with the beginning
4 or planning of the China Incident, since no evidence was
5 introduced to show HATA, while holding his position for
6 a year before the Incident's outbreak in Formosa, had
7 attended any conferences or councils, belonged to any
8 party, group or clique of politicians or officers who
9 advocated action in China. This is especially clear
10 since in the very next sentence to the one above quoted
11 with which he opened his outline of evidence against
12 HATA, Mr. Comyns-Carr states (T. 16,827), "In August
13 1937, shortly after the outbreak, he was recalled to
14 Tokyo to become Inspector-General of Military Education
15 ..." HATA held this post for less than six months,
16 for on 17 February 1938, he relieved the accused MATSUI
17 in China, this being the first of his two tours of duty
18 as a commander in China.
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1 Mr. Carr goes on to state that because of his
2 becoming Inspector-General, of Military Education
3 seven weeks after the beginning of the China Incident
4 the accused HATA, by being the Inspector-General of
5 Military Education, was one of the Three Chiefs who
6 nominate the new War Minister whenever there is a
7 cabinet change, was "at the very outset of the China
8 Incident in a strong strategic position to affect
9 policy." The fact that he was in a position to have
10 done so is true, but the inference that he did or that
11 merely by being in the position of Inspector-General
12 of Military Education he could affect policy is abso-
13 lutely false. We will not go into the function of the
14 position of Inspector-General of Military Education,
15 but relying on the Tribunal's knowledge of that posi-
16 tion which has been thoroughly explained time again
17 in this long trial, we point out only that the
18 Inspector-General can exercise influence only in
19 nominating a new War Minister in the event of a change
20 of cabinets. And the record shows there was no cabinet
21 change in the period between late August 1937 when
22 HATA assumed the post and 17 February 1939 when HATA
23 relieved MATSUI in China.
24

25 To summarize: By the prosecution's own
statement and its own exhibit (102) the accused HATA

1 neither did, nor was he in a position to plan, pre-
2 pare, initiate or wage a war of aggression against
3 China. We do not, since the above statement is true,
4 argue here the merits of the China War as a war of
5 aggression or a war of self-defense against the
6 spreading Communist menace. General HATA simply was
7 not involved in it at its inception, by reason of
8 his being on a far-off island at the outbreak, nor
9 did he, by becoming Inspector-General of Military
10 Education after the outbreak, have anything to do with
11 policy, since he had no opportunity to help nominate
12 a new War Minister who may or may not have continued
13 on the course already embarked upon by the Japanese
14 Government when HATA came to Tokyo on 26 August 1937.
15 The prosecution's position then, boils down to this:
16 HATA, it is charged, "Carried on aggressive warfare
17 in China at two different periods of time as commander
18 of various armies in China" simply because he was a
19 life-long soldier and he happened to be of high enough
20 rank, after war broke out, to command an army. That,
21 then, is his sin. The war was not of his doing, he
22 was in no position to stop it once it broke out, but
23 he did fight in it for his country. He didn't vol-
24 unteer, but neither did he refuse to fight and resign
25 his commission in order not to have to fight. Is that,

1 then, the price that the prosecution would demand of
2 a man who had chosen the profession of arms for his
3 life's work? Do the Allied prosecution and the
4 countries represented here, my own included, seek, by
5 levelling such a charge at a professional soldier, to
6 state as the law of these countries that a man who
7 fights for his country when he is called upon to do
8 so because of his membership in the honorable profes-
9 sion of arms, must, if he was born in a country
10 destined to lose the war, face the charge by his
11 victorious opponents that he "carried on aggressive
12 warfare" and be put on trial for his life? Nothing
13 in the Potsdam Declaration, nothing in any of the
14 League of Nations Conventions, nothing in the Treaties,
15 nothing in International Law, nothing in the Charter
16 of the Tribunal, even hint of such a possibility. We
17 rest at ease with the Tribunal's judgment on this
18 charge.

19
20 Point 2. Quote: "As Minister of War from
21 August 30, 1939, to July 22, 1940, he helped determine
22 the national policy and worked on the plans and prepar-
23 ations for aggressive war during that period." This
24 second point is divided obviously into two parts,
25 the first being the determination of the national
policy, and the second being the planning and preparing

1 for an aggressive war in the future. As the Tribunal
2 has heard from other accused who have held the position
3 of War Minister, namely Generals ARAKI and MINAMI, the
4 War Minister did not create or determine national
5 policy. National policy with reference to the China
6 Incident had already been determined and laid down by
7 the First KONOYE Cabinet during the life of which the
8 China Affair had broken out. From the few thousands
9 of Japanese troops present in China when the Incident
10 began, the Japanese Army in China had grown to 900,000
11 when HATA became War Minister. No War Minister who
12 had preceded HATA had cut down or had even tried to
13 cut down the size of the Japanese forces in China.
14 Always, because of the circumstances, the number of
15 Japanese troops had continued to grow. As Brigadier
16 Nolan stated in his explanation to the Tribunal of
17 the position of the War Minister (589), "Briefly one
18 might say that the Minister of War administers. . ."
19 We are speaking, the Tribunal of course realizes, of
20 the days before the Second KONOYE Cabinet and sub-
21 sequent cabinets, when the War Minister was still not
22 a powerful figure politically and, as General ARAKI
23 and MINAMI have testified, and as Brigadier Nolan
24 tells us, the War Minister merely administered and
25 carried out the policies of the cabinet. In the

1 free of this, General HATA was the first War Minister
2 to take positive steps to bring an end to the China
3 Incident by actually beginning negotiations with
4 Chiang Kai-shek for the termination of the Incident
5 by making the previously unheard of Japanese conces-
6 sion of offering to withdraw all Japanese troops
7 from China.

8 Still taking the bull by the horns and deter-
9 mining national policy, according to his own views for
10 the quick settlement of the China Incident, and break-
11 ing away from the former national policy which had
12 permitted the growth of the Japanese army to 900,000
13 men in China, he backed up his negotiations with
14 Chiang Kai-shek with a show of good faith by reducing,
15 when he presented his first army budget as War Minister,
16 the Japanese strength in China to 500,000 men. Because
17 of the strenuous objections by the General Staff to
18 any such wholesale slash in Japanese strength in
19 China, the figure was finally set at 600,000. This,
20 then, is an example of the way General HATA, as War
21 Minister "helped determine the national policy and
22 worked on the plans and preparations for aggressive
23 war during that period." But before we go further
24 into his actions as War Minister, let us examine the
25 prosecution's evidence "that as Minister of War from

1 August 30, 1939, to July 22, 1940, he helped determine
2 national policy and worked on the plans and prepara-
3 tions for aggressive war during that period."

4 First, it is claimed (16,827-28) that "during
5 his administration several of the important acts
6 involving furtherance of the conspiracy were carried
7 out. Certain industries such as the Cast Iron
8 Manufacturing Facilities Industry were brought under
9 control (record page 8,327; 8,403; 8,299)." An
10 examination of these pages of the record reveals that
11 this evidence is to be found in the testimony of the
12 alleged economic expert Liebert. Two of these three
13 acts involved the Ministry of Commerce and Industry
14 and one involved the War and Navy Ministries. Taking
15 them in numerical order, the first (8,299) it turns
16 out, is the Coal Distribution Law. This Law was
17 exercised through the Commerce and Industry Ministry.
18 The next (8,327) is the Cast Iron Manufacturing
19 Facilities Restricting Regulation of September 23,
20 1939, Commerce and Industry Department. The last one
21 (8,403) shows that pursuant to the already existing
22 General Mobilization Law, Imperial Ordinance 901 of
23 28 December 1939 was promulgated. It was called
24 "Use and Expropriation Ordinance of Factories and
25 Workshops." Under it "the War and Navy Ministries

1 were given authority to authorize expropriation of
2 land, buildings, materials, etc." There is no
3 evidence whatsoever that HATA had this ordinance
4 promulgated or that he ever used it. In fact, there
5 is no evidence that he had anything to do with any
6 of these three regulations or that he ever knew about
7 their existence.

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1 We next learn that "On October 12, 1939, the
2 accused appointed MUTO as Chief of the highly important
3 Military Affairs Bureau in the War Ministry . . ."
4 Presumably because MUTO is also an accused in this
5 trial this appointment constitutes some heinous act.
6 That there was nothing unusual or extraordinary or con-
7 spiratorial about this action is shown by the evidence
8 of the witness INUMA, Mamoru, (28997) who states:

9 "In September 1939, I recommended Major
10 General MUTO as Chief of Military Affairs
11 Bureau to General HATA who was then the War
12 Minister, as the proper person to be appointed
13 to that position. I made this recommendation
14 in accordance with my duties as Chief of the
15 Personnel Affairs Bureau. It is the duty of
16 the Chief of the Personnel Affairs Bureau to
17 make recommendations to the War Minister for
18 the appointment of officers to the various
19 positions in the army. I made this recom-
20 mendation after Lieutenant General MACHIJIRI,
21 the outgoing Chief of the Military Bureau
22 had recommended General MUTO as his success-
23 sor and, after I, myself, had fully consid-
24 ered the opinions of the Military Affairs
25 Bureau. In accordance with the regular

1 military procedure in such matters, War
2 Minister HATA then submitted the name of
3 Major General MUTO to the Three Chiefs'
4 Council. Major General MUTO was then desig-
5 nated to the position as Chief of the Mili-
6 tary Affairs Bureau by the Three Chiefs'
7 Council.

8 "General HATA always followed regu-
9 lar military procedure in all matters affect-
10 ing the War Ministry and he accepted my recom-
11 mendation of General MUTO without question and
12 did his duty and submitted his name to the Three
13 Chiefs' Conference. My recommendation of
14 Major General MUTO, General HATA's acceptance
15 of that recommendation, and his presentation of
16 General MUTO to the Three Chiefs' Conference,
17 and the acceptance by the Three Chiefs' Con-
18 ference of the recommendation of General MUTO
19 were all in accordance with regular procedure
20 in such matters in the War Ministry."

21
22 There is no evidence of any nature whatsoever
23 that General MUTO was not a proper person to be ap-
24 pointed to such a position. There is no evidence that
25 General MUTO was engaged in any conspiracy for world
conquest at this time. In short, there is no evidence

1 that General HATA, when he nominated General MUTO
2 was furthering any conspiracy or was determining
3 national policy in any wrongful direction by nominating
4 General MUTO after General MUTO had been recommended
5 to General HATA in the normal, usual routine practiced
6 by the Japanese Army in such matters. Whatever the
7 prosecution may see fit to charge against General MUTO
8 later, after General MUTO assumed this position, can
9 certainly not be held against the accused HATA for,
10 as it is already stated, there is no evidence that
11 General MUTO's political conduct before this appoint-
12 ment had been anything but above reproach.

13 Next, Mr. Comyns Carr points out that "In
14 November, Imperial General Headquarters, which had
15 never been established heretofore, except in case of
16 war, was set up (Exhibit 80)." We omit the rest of
17 this paragraph because we have discovered that this
18 prosecution evidence is incorrect. It is really 1937,
19 November instead of 1939, November and not during HATA's
20 time.

21 Next comes: "During the ABE Cabinet of 1939,
22 pressure was put on France to give Japan special
23 rights in French Indo-China (Exhibits 616-A, 618-A).
24 Shortly after the YOKAI Cabinet was formed on January 16,
25 1940, pressure was put on the Netherlands for special

rights in the Dutch East Indies (Exhibit 309-A)". Let
1 us examine these exhibits for any connection with the
2 accused HATA. Exhibit 616-A it turns out, is an ex-
3cerpt from "Business Report of 1939 published by the
4 Board of South Seas, 1941" and is nothing but a review
5 by some unknown author or authors of the course of
6 the China Affair and France-Japanese diplomatic rela-
7 tions over Indo-China. Nowhere does the name of Gen-
8 eral HATA appear, and the conclusion that "pressure
9 was put on France to give Japan special rights in
10 Indo-China" is unwarranted as to him. At all events,
11 HATA is not even remotely connected with this exhibit.
12 Exhibit 618-A is an excerpt from the same source, and,
13 again, nowhere does it appear that HATA is remotely
14 connected. Exhibit No. 1309-A is a book written by
15 Hubertus J. Van Mook and published by Norton Company
16 in New York. This book is the author's review of
17 Japanese-Dutch East Indies relations over the past
18 years and in no wise is General HATA mentioned or even
19 remotely connected with such relations either directly
20 or indirectly. I need hardly remind the Tribunal of
21 the action it took whenever the defense sought to intro-
22 duce excerpts from books similar to the ones from which
23 these three excerpts were taken, and the comments the
24 Tribunal made as to the value of such testimony, even
25

1 if it should be accepted.

2 Next, we learn that "on February 16, the Mili-
3 tary Mission at Harbin drew up a plan for establishing
4 a Far Eastern Anti-Comintern to unite sabotage activities
5 against the Soviet Union (Exhibit 736)." Examination
6 of the certificate of this exhibit reveals that this
7 exhibit, the original of which is in the archives in
8 Moscow, purports to be an excerpt from "the conference
9 of chiefs of army organs in Northern Manchuria," and
10 the exhibit itself shows that it is by the Army
11 Special Service Organization at Harbin. Nowhere is
12 the name of HATA mentioned, nor is it stated that
13 his office approved of, or took part in this discussion,
14 nor that his office was in any wise connected with it.
15 Moreover, the Tribunal well knows that overseas units
16 do not come under the control of the War Minister,
17 but are directed in their operation by the General
18 Staff and still further that the Kwantung Army in
19 whose territory this plan was drawn up, is an autono-
20 mous unit and is in no wise under the control of the War
21 Minister.
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23 THE PRESIDENT: Well, we will recess now for
24 fifteen minutes.

25 (Whereupon, at 1045, a recess was taken
until 1100, after which the proceedings were

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resumed as follows:)

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus, I reported to my
4 colleagues that you, Mr. Tavenner, and Mr. Sutton saw
5 me in my chambers during the recess, and that you con-
6 tended that you were entitled to read on your summation
7 evidence that had been expressly rejected by the Court
8 simply because it appears in the document tendered for
9 identification only. The Tribunal have decided to
10 prevent you -- they have unanimously decided to prevent
11 you from reading any such evidence so rejected.
12

13 MR. LAZARUS: How about the portions, if the
14 Tribunal please, that had never been offered in evidence
15 and not rejected?

16 THE PRESIDENT: The Tribunal are unanimously
17 of opinion that you cannot read on your summation any-
18 thing that has not been admitted in evidence, whether
19 tendered for identification or not. That, of course,
20 applies to all summations, and so far as necessary that
21 warning extends to all counsel reading their summations.
22 I do not think it will be necessary in many cases, if in
23 any cases.
24

25 MR. LAZARUS: I now continue reading from the
bottom of page 17.

1 Next, we learn that "during this adminis-
2 tration the economic policy for relieving Japan of
3 its dependency on the United States for military goods
4 necessary to carrying out the divine war was adopted
5 (exhibit 1007)." The very first sentence of the
6 exhibit shows that it speaks of "economic policy which
7 should be taken in connection with diplomacy towards
8 U. S. A." The exhibit does not state that this
9 policy was adopted, and no where is there mention
10 of a "divine war." More important to the individual
11 case of General HATA, the name of General HATA no where
12 appears in the exhibit, nor is it even hinted that he
13 or his office are connected with the proposed economic
14 policy either directly, or indirectly.

15 Continuing, we next see that "during the
16 same month of March, the program of the Kwantung Army
17 for aggression against the Soviet was sanctioned
18 (exhibit 705)." Examination of this exhibit reveals
19 that it is the affidavit of Lieutenant-General
20 TOMINAGA, Kyoji, a prisoner of war of the Soviet Union.
21 On page 5 of this exhibit we see that the plan was
22 sanctioned in March of 1940 and that the plan was
23 reported to Prince KAMIN, the Chief of the General
24 Staff Headquarters, who in turn reported it to the
25 Emperor. These are the only two people to whom the

1 plan was reported. Obviously, then, if the plan were
2 reported only to the Emperor, HATA and
3 the War Ministry could have known nothing about it,
4 could have had no connection with it whatsoever, and
5 could certainly have no responsibility for it. It
6 is again stated to the Tribunal that the Kwantung
7 Army, being an overseas unit worked only through
8 General Headquarters as the evidence has shown, and
9 not through the War Ministry. Of Prince KANIN, the
10 Chief of the General Staff, and his forcing HATA to
11 resign as War Minister, because of his, HATA's oppo-
12 sition to the Tripartite Pact, we shall have more to
13 say later.

14 The next time (16,829) shows that "on March
15 30 the puppet Central Government of Wang Ching Wei at
16 Nanking was established (exhibit 276A)." The exhibit
17 turns out to be a two-line excerpt from the Japan Year
18 Book 1941-42, page 1000, making note of the establish-
19 ment of the Central Government. As in all previous
20 exhibits, no mention of the accused HATA is made, nor
21 is there a hint or a suggestion that HATA was in any-
22 wise connected with this event.

23 We next learn that "severer regulations were
24 put into effect by the War Ministry with respect to
25

military training in schools (exhibit 137)." The
1 exhibit shows that this was a War Ministry ordinance
2 and, of course, was issued in the name of the then
3 War Minister, General HATA. However, instead of the
4 exhibit's showing that severer regulations were put
5 into effect with respect to military training in
6 schools, the very first sentence of the exhibit says
7 "the following revision will be made in the regulation
8 regarding the inspection of Military Training Course in
9 the Youth School." And, indeed, a reading of the
10 exhibit reveals it to be just that and only that. How
11 Mr. Carr ever came to conclude that this exhibit
12 revealed "severer regulations with respect of military
13 training in schools," we do not know.

14
15 We next find that "the accused attended the
16 Four Minister's Conference of June 18, 1940, which
17 decided to make certain requests upon France, and in
18 the event of refusal to use force (exhibit 619). Fol-
19 lowing this a further program of pressure was put into
20 effect against France (exhibit 615A, 618A)." Examina-
21 tion of the first exhibit (619) reveals that this is an
22 excerpt from KIDO's diary. KIDO had a talk with the
23 Foreign Minister and he discussed the two plans which
24 were debated at the previous day's Four Ministers'
25 Conference. The value of such evidence gleaned

1 second-hand about matters discussed on the previous
2 day, we leave to this Tribunal. It shows that two
3 plans were considered: One, "that a request be sub-
4 mitted regarding the pro-Chiang acts, and in case the
5 request is refused by the French, that force be
6 employed"; and the second, "that force be employed
7 from the beginning on the idea that negotiation is
8 unnecessary." The decision was that the military
9 ministers wanted the first plan to be adopted. The
10 Tribunal, of course, is well aware, that no action was
11 taken with reference to Indo-China during the YONAI
12 Cabinet's life. Subsequent negotiations and the
13 landing of troops in Indo-China took place during the
14 Second KONOYE Cabinet when the accused HATA was no
15 longer in the government. Exhibit 615A is an excerpt
16 from the Tokyo Gazette and is issued by the Bureau
17 of Information, Department of Foreign Affairs. We
18 again respectfully remind the Tribunal of the position
19 it took when the defense sought to introduce what were
20 termed "hand-outs" of this nature and its remarks as
21 to their value as evidence. Further, nowhere does it
22 appear that General HATA, either directly or indirectly,
23 had anything to do or was in anywise connected with
24 the diplomatic negotiations and representations alluded
25 to in this excerpt. Of exhibit 618A, we have spoken

before.

1 Next, we find that "in March 1940, the
2 accused, as War Minister, made it clear that Japan's
3 progress would not be stopped by the Nine-Power Treaty
4 (exhibit 914)." This exhibit it turns out, is a
5 report by Ambassador Ott to the German Foreign Office
6 on the "report of strong words by the spokesman of
7 the army in the Diet that Japan's progress in China
8 cannot be stopped by the obsolete Nine-Power Treaty."

9 The last exhibits (527 and 528) referred to
10 by the prosecution under point 2 (16829) are minutes
11 of a joint conference at the Foreign Ministry among
12 War, Navy, and Foreign Office officials discussing
13 the possible aspects of a Tripartite Pact. No decision
14 is made, all aspects are explored in interminable talk.
15 This is no more than government discussion of one of
16 the leading issues of the day by the permanent members
17 of these ministries. That it is not on a high policy
18 level is seen by the fact that the War Ministry is
19 represented by a lieutenant-colonel and the General
20 Staff by a major. A reading of the documents shows
21 that they intended to place their thoughts on the
22 subject before their superiors later. Nowhere is the
23 name of IMTA or the War Minister mentioned. It is
24 not even suggested that he knew about, sanctioned,
25

1 agreed with or took part directly or indirectly in
2 the talks. About HATA's stand on the Tripartite Pact,
3 we'll discuss under the prosecution's point 3, that
4 HATA was "one of the prime movers in the overthrow of
5 the YONAI Cabinet." With reference to these exhibits
6 we again respectfully refer to the President's state-
7 ments that unless an accused is himself connected with
8 an exhibit, the Tribunal will not hold him responsible
9 for actions taken by the government of which he is a
10 member, when it is not shown he knew of the actions
11 or that he took part in them. Further, these two joint
12 conferences took place on 12 and 16 July, 1940, and on
13 the very next page (16830), Mr. Carr tells us that War
14 Minister HATA "On 16th July submitted his resigna-
15 tion. . ." It is impossible, therefore, that HATA
16 could have been involved in the 16 July meeting, which
17 was a continuation of the study begun 12 July. The
18 Tribunal will also note, the minutes of these studies
19 were found, according to the certificates attached to
20 the exhibits, in the Foreign Ministry, not the War
21 Ministry.
22

23 This, then, is the sum total of all the
24 evidence the prosecution has introduced and which it
25 claims proves HATA "helped determine the national
policy and worked on the plans and preparations for

1 aggressive war during that period" while he was War
2 Minister. Not one single act of his own is shown.
3 It all consists of what others said and did and there
4 is no evidence there involving HATA or his office.
5 Now let us examine the record and see what HATA did
6 do while in office and let us see if he "worked on
7 plans and preparations for aggressive war during that
8 period." The evidence on HATA's behalf began on
9 September 19, 1947 (28853). The first witness to
10 give testimony concerning HATA's actions as War
11 Minister was former Premier Admiral YONAI. Before
12 going into the actions of HATA as War Minister in
13 the Yonai Cabinet, it is well to note what YONAI,
14 whose cabinet, as well as YONAI himself, were so
15 highly praised by Mr. Keenan when the Chief Prosecutor
16 was cross-examined the accused KIDO, has to say with
17 reference to the China Incident and HATA's lack of
18 connection with it. (28917).

19 Quote: "When the Incident of the Marco Polo
20 Bridge broke out on 7 July 1937, I was the Navy
21 Minister in the First KONOYE Cabinet. Just at this
22 time, General HATA was the Commander-in-Chief of the
23 Japanese Forces on the Island of Formosa (Taiwan) and,
24 it is needless to say, that neither the forces in
25 Formosa, nor General HATA had any connection with this

1 incident, either in its beginning or later. It was
2 not until February 1938 that General HATA first went
3 to China when he was appointed Commander-in-Chief of
4 the Japanese Forces in Central China."

5 With reference to the Tripartite Pact, during
6 the life of this cabinet, YONAI says (28917):

7 "During the period from January 16, 1940
8 to July 21, 1940, when I was the Prime Minister,
9 General HATA, Shunroku was the War Minister at the
10 time. With respect to the Tripartite Pact with the
11 Axis countries, my cabinet was completely opposed to
12 it and for this reason this question did not even once
13 come up in our cabinet conferences."

14 On the next page (28918) YONAI states:

15 "Coming to this question and to General HATA
16 who was my War Minister, he earnestly cooperated with
17 my cabinet's policy and, of course, naturally was op-
18 posed to the pact."

19 Next, the defense produced the witness
20 ARITA, Hachiro, the Foreign Minister in the YONAI
21 Cabinet, and he states (28945):

22 "The YONAI Cabinet was opposed to the Tri-
23 partite Pact because we were opposed to any entangle-
24 ments with Germany. Such being the case, the Tripartite
25 Pact was never during the life of the YONAI Cabinet put

1 on the agenda for discussion by the ministers of the
2 cabinet.

3 "General HATA was the War Minister in the
4 YONAI Cabinet and throughout his tenure of office
5 he was in full accord with the policy of the cabinet
6 and cooperated fully with it. In fact, I knew General
7 HATA opposed the Tripartite Pact from the days it
8 was being first discussed in Japan. When I was
9 Foreign Minister in the HIRANUMA Cabinet, I had occasion
10 to have an audience with the Emperor. While waiting
11 to be received, I met General HATA, who was then
12 aide-de-camp to His Majesty. We conversed informally
13 and the subject of the Tripartite Pact came up. General
14 HATA stated it appeared the Emperor objected to the
15 proposed Pact and that he himself was strongly opposed
16 to it. He made it clear to me that beside his personal
17 opposition to any alliance with the Germans, he also
18 opposed the pact on the grounds that he could see no
19 benefit to Japan in signing a pact that would work
20 against the interests of our country and which would
21 antagonize the Anglo-Saxon countries."
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1 Here then are the two most important members
2 of the cabinet, the Prime Minister himself and the
3 Foreign Minister, and they both state that HATA joined
4 the rest of the cabinet in opposing the Tripartite
5 Pact. The subject of the pact never came up for dis-
6 cussion by the ministers, and the lower level dis-
7 cussions revealed in the previously-mentioned prosecu-
8 tion exhibits 527 and 528 never reached the high level
9 of discussion by the ministers in the YONAI Cabinet.
10 Throughout the prosecution's case in chief, and during
11 Mr. Keenan's above-mentioned cross-examination of
12 KIDO, the YONAI-ARITA Cabinet and its policies were
13 held up to the Tribunal as conservative, anti-war, and
14 anti-Tripartite Pact. In fact, Mr. Tavenner in his
15 lengthy opening address, in the prosecution's presen-
16 tation of its Tripartite phase, praises the YONAI-
17 ARITA Cabinet and its pro-Anglo-American policy.
18 Mr. Tavenner stated (5,860), "In opposition to the YONAI-
19 ARITA government's effort to reach an agreement with
20 Britain and America, Germany endeavored to excite
21 Japan's feeling toward America . . ." The YONAI and
22 ARITA referred to by Mr. Tavenner are the same YONAI
23 and ARITA who came forward in HATA's individual defense
24 to state as just quoted above from their affidavits that
25 HATA agreed with their policies and agreed fully with

1 their cabinet and that its policy was not pro-German.
2 Mr. Tavenner again repeats by stating on the same page,
3 ". . . the German Ambassador to Japan recommended to
4 his government the annexation of French-Indo China
5 by Japan on the grounds that it would increase the
6 chance for an early end of the China conflict, that
7 it would intensify the differences between Japan and
8 the Anglo-Saxon powers to such an extent that the
9 danger of agreement would be eliminated for a long time
10 and that it would result in a severe blow to the YONAI
11 Cabinet, and probably bring its replacement by a more
12 pro-German cabinet if the government should fail to act
13 in this matter."

14 Mr. Keenan, Chief of Counsel, revealed the
15 prosecution's evaluation of Admiral YONAI and the
16 YONAI Cabinet during his cross-examination of the
17 accused KIDO, as follows: (p. 31556)

18 "Q YONAI opposed the military alliance with
19 Germany and Italy?

20 "Q Don't you know that YONAI emphatically
21 opposed military alliance with Germany, Italy, and
22 Japan?
23

24 "Q YONAI was known to you to be an exceed-
25 ingly strong and even stubborn man, isn't that true?"

And on another day, Mr. Keenan, still

1 cross-examining the accused KIDO, and revealing the
2 prosecution's high estimate of YONAI and the YONAI
3 Cabinet, asked this question: (p. 31,351)

4 "Q I will remind you that you were Lord Keeper
5 of the Privy Seal at the time of the fall of the YONAI
6 Cabinet. The YONAI Cabinet was well known by you and
7 others to be a cabinet devoted to peace, is that not
8 true?

9 "Q . . . It was against the Tripartite -- It
10 was against an alliance with Germany?"

11 We offer these quotes from Mr. Tavenner's
12 opening address on the prosecution's Tripartite phase
13 and from the cross-examination by the Chief of Counsel
14 to make amply clear what the prosecution's position
15 on YONAI and the YONAI Cabinet has been throughout
16 the trial. This, then, is the YONAI praised so highly
17 by the prosecution, who testified for HATA before this
18 Tribunal and who stubbornly and steadfastly insisted
19 that HATA had supported his policies and the policies
20 of his cabinet. These policies, as shown by the above
21 quotes, were pro-Anglo-American and anti-Tripartite
22 Pact. The prosecution had failed to produce as a wit-
23 ness before the Tribunal this man who had been a key
24 figure during this critical time in Japanese political
25 history. His testimony, on behalf of HATA, (and the

1 Tribunal will note that although YONAI had served in
2 cabinets with several others of the accused here, he
3 testified only for HATA) shows why the prosecution
4 did not call him. They could not afford to, for al-
5 though his testimony supports their contention that
6 certain circles were in favor of the Tripartite Pact
7 and wished to smash the YONAI Cabinet in order to
8 achieve their aim, HATA was not one of this group.
9 The prosecution's very thin case, based as it is on
10 newspaper articles which this Tribunal has condemned
11 as unworthy evidence and extracts based on hearsay
12 statements in KIDO's diary that HATA was pro-Tripartite
13 Pact, would be exploded by YONAI's testimony. Not
14 only that, but we also corrected another oversight on
15 the part of the prosecution by producing ARITA, Foreign
16 Minister in the YONAI Cabinet, who also testified that
17 HATA supported the YONAI Cabinet and its policies, and
18 had been opposed to the Tripartite Pact since the days
19 of the HIRANUMA Cabinet when ARITA was Foreign Minister,
20 YONAI was Navy Minister, and HATA was Chief Aide-de-Camp
21 to the Emperor.

22 The next witness to testify as to HATA's
23 activities while War Minister was SAWADA, Shigeru. He
24 testified as to HATA's actions with reference to the
25 China Incident. He stated (p. 29,009):

1 "The question was how was the incident to be
2 settled? It was HATA's contention that the best way
3 to secure peace with China was to reduce the strength
4 of the Japanese troops in China. As his first step in
5 this direction, he sought to decrease, in drawing up
6 the army budget for the year 1940, the number of Japanese
7 troops in China from 900,000 to 500,000. The General
8 Staff was completely opposed to such an amount of
9 reduction and said it was impossible. The matter was
10 then taken up and discussed between the War Minister
11 and the General Staff and eventually the number of
12 troops was decreased to between 600,000 and 650,000."

13 Are these, then, the actions of a man who
14 "worked on plans and preparations for aggressive war"
15 while he was War Minister?

16 Next, we produced the witness TANAKA, Ryukichi,
17 who was also the star witness for the prosecution and
18 was produced several times by them. He testified
19 (p. 29,408):

20 "Q What, if you know, was the position of
21 General HATA with reference to the proposed Tripartite
22 Pact?
23

24 "A I know that General HATA was very strongly
25 opposed to it. In fact, it was very well known in army
circles that HATA strongly opposed the proposed

Tripartite Pact."

1
2 Later, General TANAKA, with reference to the
3 China Incident and HATA's actions with reference
4 thereto as War Minister, was questioned and answered
5 as follows (p. 29,411):

6 "Q While HATA was War Minister and you were
7 a section chief under him, do you know if General HATA
8 took any action with reference to the China Incident?

9 "A Yes. In the fall of 1939 when HATA was,
10 War Minister in the ABE Cabinet, I began, under
11 instructions from General HATA, negotiations with Chiang
12 Kai-shek for a peaceful settlement of the China Incident.
13 HATA told me that he wanted to bring about peace with
14 China by the reduction and then the withdrawal of all
15 Japanese troops from China. HATA told me that because
16 of the opposition around him to his plan, we would have
17 to work under cover and unofficially. General HATA
18 gave me two points on which to work. One was to arrange
19 the dates and place for the two messengers, one from
20 HATA and one from Chiang Kai-shek, to meet, and the
21 second was that the basis of the peace treaty would be
22 the evacuation of all Japanese troops from China.
23 HATA told me that while the negotiations were going on
24 he would show his good faith to the Chinese by reducing
25 the Japanese troops in China from 900,000 to between

1 500,000 and 600,000 when he made the next budget as War
2 Minister, and I know that in his 1940 budget he did
3 reduce the number of Japanese troops in China to approx-
4 imately 600,000. However, there was great opposition
5 from within the War Ministry and the General Staff to
6 any withdrawal of Japanese troops from China. It was
7 insisted that Japanese troops should be permanently kept
8 in the Shanghai and North China areas. HATA opposed
9 this. He stated that we must evacuate all troops from
10 China. He stated that if we did not evacuate Japanese
11 troops from China there would be absolutely no hope of
12 concluding a peace treaty with Chiang Kai-shek. The
13 necessary negotiations with Chiang Kai-shek were so
14 secret that at first the preliminary steps had to be
15 carried out with signal codes."

16 Thus the testimony of TANAKA confirms the
17 evidence given by SAWADA with reference to HATA's
18 actions while War Minister on the China Incident and
19 the testimony of YONAI and ARITA as to HATA's opposi-
20 tion to the Tripartite Pact. Surely, the prosecution
21 after having used TANAKA for so much and so often to
22 help them make out their own case will not try to im-
23 peach their star witness when he gives testimony on
24 behalf of one of the accused, namely, HATA. It is
25 highly significant that the prosecution did not even

1 attempt to cross-examine either SAWADA or TANAKA on
2 HATA's reduction of the Japanese troops in China by
3 cutting the army budget appropriations for the China
4 Incident. This was the only budget that HATA prepared
5 during the ten months that he was War Minister in the
6 ABE and YONAI Cabinets. His actions, while War Minis-
7 ter, speak far more eloquently as to his position with
8 reference to the China Incident than any speech he
9 might have made publicly or any intentions he might have
10 expressed privately.

11 The prosecution, and the Tribunal, on occasion,
12 have characterized as propaganda, speeches and writings
13 offered as evidence by other accused when their actions
14 while in office belied those speeches or writings.
15 Here, we have offered the best kind of evidence, namely,
16 action taken by HATA while in office and the evidence
17 given by two people who should know, namely, SAWADA,
18 Vice-Chief of the General Staff at the time, and TANAKA,
19 Section Chief of the Military Service Bureau in the
20 War Ministry at the time, and the testimony of both,
21 we repeat, went absolutely unchallenged by the
22 prosecution.
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Surely, such action was not the action of a man who "worked on plans and preparations for aggressive war," while he was War Minister. As we revealed, while reviewing all the exhibits above which the prosecution claims show that HATA "worked on plans and preparations for aggressive war" while War Minister, the prosecution's evidence on this second point, are negative in nature; not one of them directly connects HATA as a member of any conspiracy, if indeed a conspiracy existed; not one of them showed that HATA in any wise forwarded the plans of any such alleged conspiracy; not one of them shows HATA as favoring any new aggressive war. It must be remembered, too, that at the time HATA was War Minister, the China Incident was already three years old, and the Pacific war did not begin until the end of 1941. If, by saying that HATA "worked on plans and preparations for aggressive war" the prosecution means the China Incident, HATA's actions in reducing the army budget lay at rest that contention. Anything he may have said publicly in support of the policies of the YONAI Cabinet could not, by any stretch of the imagination, be called "working on plans and preparations for aggressive war" since, as we have shown by quotes from Mr. Tavenner and Mr. Keenan, the prosecution rightly believes the YONAI Cabinet a peace cabinet. If, by working on "plans and preparations

1 for aggressive war" while War Minister, the prosecution
2 means the war which broke out later, namely the Pacific
3 War, we again state that none of the exhibits above re-
4 ferred to even remotely connect HATA with any such plans
5 and preparations. In this instance we can go one step
6 further and give positive evidence and again, as before,
7 uncontroverted evidence that HATA unequivocally showed
8 he was opposed to any war, or talk of war, with the
9 Western Powers.

10 We refer the Tribunal to the testimony of
11 TANAKA, Ryukichi (p. 29,410):

12 "A Yes, in 1939 when General HATA learned that
13 a certain colonel made a speech in Sendai attacking the
14 United States and England, saying, 'Down with those
15 countries,' he became indignant and ordered me to have
16 that officer brought back to Tokyo. When I had him
17 brought back to Tokyo, General HATA reprimanded him and
18 then transferred him to an outlying post as punishment."

19 The witness, OIKAWA (p. 29,004) who was Navy
20 Minister in the Second and Third KONOYE Cabinets
21 testified:

22 "In or about September, 1941, Lieutenant
23 General USHIEGUGU, Chief of Staff of the China Expedition-
24 ary Forces, called upon me at the Navy Minister's office
25 as a messenger dispatched from General HATA, Shunroku,

1 the Commander in Chief of the China Expeditionary Forces,
2 with the following message from General HATA:

3 "Recently, relations between America and Japan
4 have been deteriorating. America is opposed to Japan's
5 stationing her troops in China. I believe that in order
6 to avoid a clash with America, we must withdraw all our
7 troops from China. I heartily request you to do your
8 utmost as Navy Minister to prevent a conflict between
9 America and Japan."

10 There was no cross-examination by the prose-
11 cution of this witness in this all-important testimony.

12 The witness TANAKA confirmed OIKAWA's testi-
13 mony on this point (p. 29,413):

14 "Q After General HATA became Commander of the
15 Japanese Forces in China while you were still a Bureau
16 Chief in the War Ministry, do you know of any statements
17 made or any actions taken by General HATA with reference
18 to the Pacific War?

19 "A Yes. In September, 1941, when General
20 HATA was Commander in China and when relations between
21 America and Japan were steadily deteriorating, General
22 HATA sent his Chief of Staff, Lieutenant General USHIROGU,
23 to Tokyo to see me and tell me that he, HATA, wanted to
24 withdraw all Japanese troops from China in order to
25 avoid a war with America. HATA asked me to help pass

this plan of his in the War Ministry.

1 "Q Then what happened?

2 "A After General USHIROGU had seen them, he
3 came and told me the answers he received from each of
4 these men, before he left for China again to report to
5 General HATA."

6 To summarize Point 2, that HATA "as Minister of
7 War in the ABE and YONAI Cabinets, he helped to deter-
8 mine the national policy and worked on plans and pre-
9 parations for aggressive war during that period," the
10 prosecution's evidence which we have reviewed utterly
11 fails to sustain the prosecution's contention. On the
12 other hand, the defense evidence offered by YONAI and
13 HATA shows HATA opposed the Tripartite Pact from as
14 far back as 1938, had supported the YONAI Cabinet and its
15 policies, which cabinet and policies, as the quotes from
16 Mr. Tavenner and Mr. Keenan show, the prosecution has
17 held up as pro-peace, pro-Anglo-American and Anti-Tri-
18 partite Pact. Over and beyond that, HATA took positive
19 steps to bring about peace with China, and implemented
20 and supported his peace overtures to China with a reduc-
21 tion in the Japanese Army budget for the China Incident,
22 bringing down the Japanese Army strength in China from
23 900,000 to approximately 600,000, and this, as TANAKA
24 and SAWADA tell us, in the face of the strenuous
25

1 opposition of the General Staff in Tokyo. Far from pro-
2 moting plans for aggressive war in the Pacific, he cen-
3 sured and punished a Japanese colonel who had ranted
4 against England and America, and even after he had left
5 the War Ministry and was in China, far removed from the
6 Tokyo scene and utterly without policy-making power, he
7 had sent his Chief of Staff urging that, in order to
8 avoid a war in the Pacific, Japan should withdraw all
9 its troops from China. While War Minister he had advo-
10 cated the withdrawal of all Japanese troops from China,
11 so his position in this respect was consistent through-
12 out. Surely these actions overwhelm any contention or
13 inferences which the prosecution may seek to draw from
14 the negative type of testimony on which it relies and
15 which we have previously reviewed, to sustain its point
16 that HATA "worked on plans and preparations for aggres-
17 sive war" while War Minister.

18 We now turn our attention to the prosecution's
19 third point, "that he was one of the prime movers in the
20 overthrow of the YONAI Cabinet, thus giving new direction
21 and expansion to the entire conspiracy." This third
22 point presupposes that a conspiracy existed, and that the
23 most certain thing in this entire trial, next to the un-
24 challenged fact that a war did take place, is that the
25 prosecution has completely and totally failed to establish

1 the existence of a conspiracy. Here there is no "Mein
2 Kampf," no Fuhrer, no single party, no relentless direc-
3 tion, no pattern. The question of conspiracy is treated
4 fully elsewhere in the defense summations, and we adopt
5 that argument. Our interest in this particular summation
6 is with the acts of HATA while War Minister. It is the
7 only position of a policy-making level which HATA ever
8 held, and it is the only opportunity HATA ever had of
9 joining the conspiracy, if such ever existed, or showing
10 that he knew a conspiracy existed and was a member of it.
11 We maintain that all the evidence adduced under Point 2
12 absolutely fails to show that HATA was a member cons-
13 ciously, or unconsciously of any conspiracy.

14 To begin with, HATA became War Minister, not
15 because he belonged to, or was a member of any military
16 clique, or member of any conspiracy. He did not become
17 War Minister because any of the accused in the dock nomi-
18 nated him to be War Minister. He became War Minister
19 in the ABE Cabinet in spite of, not because of, the
20 actions of the Three Chiefs who, except in this instance,
21 invariably nominate the new War Minister. When the
22 HIRANUMA Cabinet fell and the ABE Cabinet came into being,
23 the Three Chiefs named General TADA to be War Minister.
24 The Emperor disapproved and ordered that HATA be given
25 the post. On this point General TANAKA testified

(p. 29,409):

1 "Q Do you know if there were any other
2 reasons why the army opposed General HATA as strongly
3 as you say you know they did?

4 "A Yes, there were several reasons. The
5 hatred and dislike of General HATA persisted from the
6 day when he first supported the readjustment plan of the
7 army when General UGAI was War Minister and increased
8 when he became War Minister in the ABE Cabinet, which
9 cabinet preceded the YONAI Cabinet. Two incidents
10 served to heighten the hatred and dislike for HATA. The
11 first was that another man had been recommended by the
12 Three Chiefs' Council to be War Minister in the ABE
13 Cabinet but the Emperor ordered that HATA should become
14 the War Minister and the post was given to General HATA."
15

16 Further, on this point, during Mr. Keenan's
17 cross-examination of the accused KIDO, this evidence
18 came out (p. 31,339):

19 "Q And the Emperor did recommend the appoint-
20 ment to be UBEZU or HATA, and he got General HATA,
21 didn't he?

22 "A Yes.

23 "Q And HATA at that time was his Chief Aide-
24 de-Camp?

25 "A Yes.

1 "Q So that it was quite apparent there was a
2 good deal of personal choice involved in that appoint-
3 ment?

4 "A Yes."

5 This, then, was how HATA became War Minister.
6 The Emperor himself interceded to make HATA War Minister.
7 Throughout the trial, the prosecution has made it
8 pellucid that it absolved the Emperor of all complicity
9 in the alleged conspiracy. In his now famous colloquy
10 with the President of this Tribunal, Mr. Keenan made it
11 crystal clear that he did not hold the Emperor respons-
12 ible for or implicated in the actions which led to the
13 war. The chief prosecutor's examination of KIDO and
14 TOJO further amplifies the prosecution's stand on this
15 point. Here, then, is the action of the Emperor who has
16 been absolved of guilt directly intervening in the affair
17 of state to reject the regularly-nominated War Minister
18 and to order the appointment of his own personal choice,
19 General HATA, who at that time was his Chief Aide-de-
20 Camp. It is apparent, then, that HATA had the full con-
21 fidence of the Emperor and was prepared to carry out the
22 Emperor's policies as long as he served as War Minister.
23 The prosecution cannot contend that HATA was a conspirator
24 or an advocate of war or an advocate of the Triparte Pact
25 because HATA became War Minister on orders from the man

1 absolved of all criminality by the prosecution. It must
2 be the position of the prosecution that HATA was not a
3 conspirator because of his appointment by the Emperor
4 for, as we have seen earlier, the prosecution seeks to
5 make HATA's approval of MUTO and TOJO to their respect-
6 ive positions in the War Ministry a criminal act or an
7 act in furtherance of the conspiracy. If HATA's
8 approval of this appointment of TOJO and MUTO was the
9 act of a conspirator because TOJO and MUTO today stand
10 accused before this Tribunal, then similarly the prose-
11 cution must contend that the Emperor because of his inter-
12 vention to make HATA, who today stands accused before
13 this Tribunal, War Minister, also committed a criminal
14 act or joined and furthered the alleged conspiracy.
15 Since they do not contend that the Emperor, by making
16 HATA War Minister, committed such a crime but on the
17 contrary they exculpate him of complicity, the only con-
18 clusion is that HATA was not, and could not be stated to
19 be, a member of the conspiracy.

20 Our contention that HATA opposed the Tripartite
21 Pact now receives additional support when it is remem-
22 bered that ARITA stated (p. 28,945):

23 "In fact, I know General HATA opposed the Tri-
24 partite Pact from the days it was being first discussed
25 in Japan. When I was Foreign Minister in the HIRANUMA

1 Cabinet, I had occasion to have an audience with the
2 Emperor. While waiting to be received, I met General
3 HATA, who was then Aide-de-Camp to His Majesty. We
4 conversed informally and the subject of the Tripartite
5 Pact came up. General HATA stated it appeared the
6 Emperor objected to the proposed pact and that he him-
7 self was strongly opposed to it."

8 In the latter stages of the individual defense
9 presentations before the Tribunal, ample evidence came
10 out that the Emperor opposed the Tripartite Pact and was
11 dismayed when MATSUOKA signed it in September of 1940.
12 Here, by ARITA's statement, which is unchallenged, HATA,
13 then Chief Aide-de-Camp to the Emperor, told ARITA that
14 the Emperor opposed the Pact. Is it at all possible to
15 believe that the Emperor would insist on making War
16 Minister, in that critical period when the Tripartite
17 Pact was being considered, a man who would be in favor
18 of the Tripartite Pact when the Emperor himself opposed
19 it? For HATA to know that the Emperor opposed the Pact,
20 he and the Emperor must have discussed it, and the
21 Emperor must have known that HATA also opposed the Pact
22 and would carry out the Emperor's wishes in opposing the
23 Pact as long as he was War Minister. It is inescapable
24 that the Emperor, conclusively established as opposing
25 the Pact from its beginning, would only appoint a War

Minister who was also opposed to the Tripartite Pact.
1 That HATA adhered to his anti-Tripartite position is
2 proved conclusively by the following: Not once during
3 the ABE Cabinet did the Tripartite Pact come up. No
4 evidence has been introduced by either side that the ABE
5 Cabinet ever discussed the Tripartite Pact. Since it
6 was the army that favored the Tripartite Pact, the
7 support in the Cabinet for the Tripartite Pact would have
8 come from the one man in the Cabinet to whom the army
9 could give orders -- HATA, the War Minister. As we have
10 just stated, the question of the Pact was never broached
11 during this Cabinet.
12

13 Now we come to the critical YONAI Cabinet. The
14 two men who could tell the Tribunal what was done about
15 the Tripartite Pact in this Cabinet, YONAI and ARITA,
16 were not produced by the prosecution, but by the defense,
17 because of course, while their testimony would help the
18 prosecution's over-all picture that the army wanted the
19 Tripartite Pact, it would explode the prosecution's con-
20 tention that HATA also supported the Tripartite Pact and
21 was responsible because of this feeling for the Tripar-
22 tite Pact, for the wrecking of the YONAI Cabinet. YONAI
23 stated: (p. 28,917):
24

25 "With respect to the Tripartite Pact with the
Axis countries, my Cabinet was completely opposed to it

1 and for this reason this question did not even once
2 come up in our Cabinet conferences. Coming to this ques-
3 tion and to General HATA who was my War Minister, he
4 earnestly co-operated with my Cabinet's policy and, of
5 course, naturally was opposed to the Pact."

6 ARITA stated (p. 28,945):

7 "The YONAI Cabinet was opposed to the Tripartite
8 Pact because we were opposed to any entanglements with
9 Germany. Such being the case, the Tripartite Pact was
10 never during the life of the YONAI Cabinet put on the
11 agenda for discussion by the Ministers of the Cabinet.
12 General HATA was the War Minister in the YONAI Cabinet
13 and throughout his tenure of office he was in full
14 accord with the policy of the Cabinet and co-operated
15 fully with it."
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1 The testimony of ARITA was not challenged on
2 this point, but the prosecution did try to impeach
3 Admiral YONAI through a newspaper article which
4 purported to give a different version of the breakup
5 of the YONAI Cabinet. We will not discourse on the
6 value of newspaper articles. The Tribunal has on
7 many occasions properly characterized their value
8 as evidence. The Tribunal will not forget the
9 persistence with which Admiral YONAI denied that the
10 newspaper article gave a true account of the fall
11 of the YONAI Cabinet. The prosecution also sought to
12 impeach Admiral YONAI by means of a certain interrogation
13 taken by some Russian officer before this trial began.
14 Again Admiral YONAI denied fully and completely that
15 he ever gave the answers or made the statements imputed
16 to him. Admiral YONAI was testifying before the
17 Tribunal under oath and subject to cross-examination,
18 whereas the newspaper article and the alleged interrogation
19 had no such virtues. If the prosecution placed any
20 faith in either of these two items, why did it not
21 offer them in its case in chief against HATA? If
22 the prosecution thought these items were true accounts,
23 why did it now show these items to YONAI and ask him
24 to testify in accordance therewith? As a matter of
25 fact, the prosecution had served upon us an affidavit

1 by YONAI and had intended to use him as a witness
2 until it must have realized that upon our cross-
3 examination of YONAI, HATA would have been completely
4 absolved of any responsibility for the wrecking of
5 the YONAI Cabinet.

6 It will be noted that the prosecution did
7 not challenge the statements of YONAI and ARITA that
8 the Tripartite Pact was never discussed by the ministers
9 at any of the cabinet meetings. How, then, since
10 HATA was War Minister in both the ABE and YONAI
11 Cabinets which never discussed the Tripartite Pact
12 on a cabinet level, can the prosecution contend that
13 HATA supported the Tripartite Pact? If, indeed, he
14 were a supporter of the Pact, would he not have
15 broached it at least once during the more than ten
16 months he was War Minister in the two cabinets?

17 In the preceding HIRANUMA Cabinet, where the
18 Pact had adherents, it was constantly discussed. In
19 the succeeding 2nd KONOYE Cabinet, it was discussed
20 and soon signed. How, in the face of this silence
21 on the Pact in the two cabinets in which HATA was War
22 Minister, can the prosecution contend HATA supported
23 the Pact? How can the prosecution in one breath
24 exculpate the Emperor but in the next breath state that
25 the Emperor's own personal appointee as War Minister

was a supporter of the Tripartite Pact? Finally,
1 where is there even one quote from any statement
2 by HATA before he became War Minister, while he was
3 War Minister and after he was Minister to indicate
4 his support of the Pact? The prosecution relies only
5 on inferences, conclusions, newspaper articles which
6 it didn't dare offer in its case in chief, interrogations
7 which YONAI on the stand and under oath stated did
8 not contain his correct answers, and diary excerpts
9 based on hearsay. We rely not on negative evidence
10 but on direct evidence of SAWADA, TANAKA, ARITA and
11 YONAI and OIKAWA. The prosecution produced not one
12 witness against HATA in this entire trial, not one
13 witness to accuse him of wrongful acts in the YONAI
14 Cabinet. Surely, the Tribunal will note the difference
15 in value of the testimony offered by the prosecution
16 and by the defense with reference to HATA's part in
17 the downfall of the YONAI Cabinet.
18

19
20 To continue with the prosecution's Third
21 Point, namely, that HATA was "a prime mover" in the
22 downfall of the YONAI Cabinet, let us analyze the
23 evidence offered on this point by both the prosecution
24 and the defense and see whether HATA deliberately
25 overthrew the YONAI Cabinet, or whether HATA himself
was overthrown along with the YONAI Cabinet because

1 he was a supporter of the YONAI Cabinet and not, as
2 the prosecution contends, a mortal enemy of the cabinet
3 and its policies.

4 Here, again, we are faced with the fact that
5 there is nowhere any official record produced by
6 either side, of a speech or an address by HATA. We,
7 therefore, must examine the circumstances surrounding
8 the downfall of the YONAI Cabinet and the testimony
9 under oath before the Tribunal, of the people who
10 knew best these circumstances because they were
11 members of the cabinet itself, or held positions
12 subordinate to or superior to HATA in the army and
13 the War Ministry.

14 The prosecution, as shown by Mr. Comyns
15 Carr's answer to our motion for dismissal, relies
16 entirely (page 16,830-1) on prosecution exhibit No 532,
17 a lengthy excerpt from KIDO's Diary. As we shall
18 see in a moment when we analyze this exhibit, all of
19 KIDO's information contained in this exhibit is
20 hearsay. On the other hand, the defense evidence on
21 this point contains no hearsay, but is encompassed
22 in the direct testimony under oath before the Tribunal
23 by the Prime Minister, and the Foreign Minister of
24 that Cabinet, YONAI and ARITA, SAWADA Shigeru, Vice-
25 Chief of the General Staff, and TANAKA, the prosecution's

1 star witness and a section chief in the War Ministry
2 at that time.

3 Admiral YONAI stated (page 28,918):

4 "And so, as my cabinet opposed and excluded
5 such a pact with Germany and also because it was not
6 pro-German, a desire to overthrow my cabinet came into
7 being. Those who opposed my cabinet were endeavoring
8 to kill two birds with one stone; that is, to have
9 General HATA, who was opposed to the Tripartite Pact,
10 resign from the government and simultaneously to
11 overthrow the cabinet. Eventually, their plan was
12 carried out and their objective was obtained -- two
13 birds killed with one stone. When General HATA resigned,
14 I believed and felt that his resignation was not of
15 his own free will, but that he was forced to resign
16 by elements he was powerless to fight and today I
17 am more convinced than ever that my beliefs then were
18 correct."

19 Here is a positive unequivocal statement
20 by the one man who should know whether HATA deliberately
21 overthrew his cabinet. He and his cabinet as we have
22 shown from quotes by Mr. Tavenner and Mr. Keenan,
23 were praised both before and after YONAI's appearance
24 on the stand before this Tribunal. Mr. Sutton sought
25 to destroy this testimony by cross-examining Admiral

YONAI on a newspaper article which purported to contain
1 a quote from a note HATA is alleged to have written
2 YONAI before HATA's resignation. The note contained
3 the words "...how about deciding to have the cabinet
4 resign?" (page 28,932). Thereafter, for eleven pages
5 of cross-examination Admiral YONAI stoutly insisted
6 that no such note had ever been received from HATA
7 and the cross-examination ended as follows: (page 28,941)

8 "Q Do you now say, Admiral, that you did
9 not receive any note from General HATA in July prior
10 to his resignation?
11

12 "A Yes, I still insist that I did not receive
13 it.

14 "Q Do you recall a conversation with a
15 member of the cabinet secretariat on 3 June 1946
16 relative to the receipt by you in July, 1940, of a
17 note from General HATA?

18 "A Did you say 1946?

19 "Q I beg your pardon; June 3, 1947. I said
20 '6' by error.

21 "A There was nothing of the kind this year.

22 "Q Did you not in that conversation with a
23 member of the cabinet secretariat on June 3, 1947, say
24 that General HATA delivered to you a note of this
25 purport?

1 "A No, I didn't say anything of the kind.

2 "Q And did you not also say that you
3 returned the note to General HATA on that occasion
4 after you had looked at it?

5 "A No recollection of it at all.

6 "Q Admiral, had you received a note of
7 the purport of the one which you read from the Asahi
8 Shimbun from your War Minister, would it not have
9 indicated that HATA was intending to destroy your
10 cabinet?"

11 After objection by the defense, the witness
12 was ordered to answer the question (page 28,943). His
13 answer was:

14 "A No, I deny that. There was nothing of
15 the end.

16 "Q And do you tell the Tribunal that a
17 note of this importance from the War Minister to the
18 Prime Minister, which was published in the leading
19 Tokyo newspaper of that day, with a direct quotation
20 of the note in the newspaper, has never been brought
21 to your attention until today?

22 "A That is right, I have never received it."

23 First, with reference to this newspaper
24 article, we point to the wording of the alleged note.
25 "...how about deciding to have the cabinet resign?" The

1 very wording itself is ridiculous. Here is a War
2 Minister in a cabinet of one of the world's leading
3 nations writing to the Prime Minister of that cabinet,
4 a man then holding one of the most powerful positions
5 in the world, and preparing, the prosecution would
6 have us believe, to destroy the cabinet. A man in
7 such a position, writing on such a serious subject,
8 the prosecution would have us believe, would write to
9 the Prime Minister the same way that a love-struck high
10 school boy would send a note to the girl in the next
11 aisle asking "How about deciding to have a date tonight?"
12 It is inconceivable that a full General would write
13 to his country's Prime Minister on so serious a matter
14 as the destruction of a national government in so
15 sophomoric a manner. Clearly, the Tribunal's consistent
16 position that newspaper articles have no value as
17 evidence is borne out in this case.

18 Now as to YONAI himself. If, indeed, HATA
19 had sent this note to him, and then had proceeded to
20 destroy the YONAI Cabinet, what earthly reason would
21 YONAI have for appearing before this Tribunal and
22 stating again and again and again, even at the expense
23 of being chided by the President of this Tribunal,
24 that HATA had never sent such a note to him? And
25 why would he insist that HATA "was forced to resign by

1 elements he was powerless to fight, and today I am
2 more convinced than ever that my beliefs then were
3 correct"? What earthly reason would this man have
4 for taking the stand in behalf of HATA, if HATA, as
5 the prosecution contends, wrecked his cabinet? YONAI
6 is a free man, he has not been, or is he now in Sugamo
7 to be tried in the future for war crimes. He was
8 under no obligation of any nature whatsoever, to HATA.
9 He testified voluntarily for HATA and, although he
10 was a member of four other cabinets as Navy Minister,
11 and was associated with many other accused in the
12 dock before this Tribunal, he testified only for HATA.
13 There can be no question, whatsoever, that YONAI is
14 telling the absolute truth in this case that HATA
15 never sent him such a note and that HATA did not resign
16 voluntarily from the YONAI Cabinet.

17 With reference to the newspaper article, we
18 remind the Tribunal of the prosecution's oft-repeated
19 allegation that the press was controlled by certain
20 powerful circles in Japan. Shortly, we shall show the
21 Tribunal a clear connection among this untruthful
22 article in the controlled Japanese press, the people
23 who forced HATA to resign as War Minister, and the
24 people whom KIDO quotes in his diary and on which the
25 prosecution relies entirely as exhibit 532 to prove

1 its point that HATA wilfully destroyed the YONAI
2 Cabinet.

3 YONAI's testimony, in itself wholly credible,
4 we submit, receives corroboration and support in
5 the testimony of our next three witnesses. ARITA,
6 Foreign Minister in the YONAI Cabinet, testified:
7 (28,946

8 "When HATA resigned as War Minister in the
9 YONAI Cabinet, I believed there must have been some
10 strong reason that forced him to resign his portfolio.
11 The cooperative attitude then taken by HATA in the
12 YONAI Cabinet leads me to believe, even today, that
13 his resignation was against his will".

14 The next witness SAWADA, Shigeru, Vice-
15 Chief of the Imperial General Staff (29,017):

16 "The intention of overthrowing the YONAI
17 Cabinet and the plan to effect peace by using Germany
18 was predominant in the army. Besides, War Minister,
19 HATA was one of the supporters of the YONAI Cabinet
20 policy. Hence, the concensus of opinion in military
21 circles was that HATA was not useful in accelerating
22 the attempts at closer ties with Germany and the
23 subsequent use of the power of Germany to effect peace
24 with China and that he lacked the desire to do so and
25 a change in War Ministers was being strongly urged.

1 Indeed, this concensus of opinion of military circles
2 was reflected in the decision of the General Staff
3 and this decision..."

4 Here again, then, there is competent testimony
5 by the Vice-Chief of the General Staff, who should
6 know, because he played such a vital role in the
7 downfall of the YONAI Cabinet that "HATA was one of
8 the supporters of the YONAI Cabinet policy".

9 THE PRESIDENT: We will adjourn until half-
10 past one.

11 (Whereupon, at 1200, a recess was taken.)

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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Lazarus.

MR. LAZARUS: If the Tribunal please, I have
during the recess stricken the portions which referred
to exhibits or parts of exhibits which were not read
into the record. Would the Tribunal like to go through
those parts now and let me notify the Tribunal?

THE PRESIDENT: Omit them when you come to
them, Mr. Lazarus.

MR. LAZARUS: The bottom of page 53, if the
Tribunal please:

Now let us proceed to examine why HATA
resigned as War Minister. SAWADA testified (29,010):

"It was the ardent desire of Prince KAWIN,
Chief of the General Staff to attain a solution of the
Incident through use of Germany and it was about the
beginning of July 1940 that he told me that he intended
to accelerate peace with China through the mediation
of Germany and that he intended to use the War Minister
to break the deadlock between the army and the cabinet.
So, he ordered me to consult with the officials in the

1 War Ministry, with these ends in view. Accordingly,
2 I called on the Vice-Minister of War, Lieutenant
3 General ANAMI, and we discussed the matter between
4 the two of us. The Vice-Minister said finally that
5 as long as the Chief of Staff did not modify his
6 view of using Germany to accelerate peace with China,
7 there was no alternative but to change the present
8 cabinet, that in view of the character of the present
9 cabinet, it was impossible to comply with the Chief
10 of Staff's objective even if some changes were made
11 among its members. When I asked the Vice-Minister
12 if that was also the opinion of the War Minister,
13 he informed me that that was not the opinion of
14 General HATA, but it was the opinion of the Vice-
15 Minister and the men below him in the War Ministry.
16 I pointed out that the matter was of extreme import-
17 ance as the opinion of the army in general and that
18 of the cabinet were in opposition to each other and
19 that we had better meet again after I had once more
20 consulted with the Chief of the General Staff, and
21 then I parted with him.

22
23 "The Chief of Staff, having heard my report
24 stated that since his opinion represented that of the
25 majority of the army and that since according to the
Vice-Minister there was no other way but a change of

1 cabinet, we must do our utmost to follow that method
2 and that he was truly sorry for the War Minister that
3 such an extreme measure had to be taken, but one must
4 bear this for the good of the country in such a vital
5 national affair. I again called on the Vice-Minister,
6 stated the decision of the Chief of the General Staff
7 and learned that ANAMI had not changed his views since
8 our previous meeting. Some days later, by the orders
9 of Prince KANIN, I wrote a letter which in substance
10 stated as follows:"

11 Here, the prosecution, which has relied all
12 along in the case against General HATA on hearsay
13 evidence in excerpts from KIDO's Diary, and a news-
14 paper article which was branded as untruthful by
15 YONAI, an alleged conversation with some unknown
16 member of the cabinet secretariat in 1947 which was
17 also denied by YONAI, an interrogation which YONAI
18 stated did not contain his true answers, took
19 advantage of a very, very technical rule of evidence
20 and objected to our reading the contents of the letter,
21 although the author himself of that letter was about
22 to testify as to its contents. Third and fourth-hand
23 hearsay has been offered by the prosecution and has
24 been accepted by the Tribunal, but here the author of
25 a most important letter could not testify as to the

1 contents of that letter, when that letter was all-
2 important for the explanation of HATA's resignation
3 as War Minister in the YONAI Cabinet. The defense
4 did all in its power, all that it was humanly possible
5 to do in the circumstances to secure the admission of
6 the contents of that letter. We caused to be made a
7 thorough search in the War Ministry files for the
8 letter and introduced the following certificate of
9 the First Demobilization Bureau (29,402):

10 "I am the Section Chief of Documents in the
11 First Demobilization Bureau and hereby certify that
12 after searching for the letter which was sent in
13 July 1940 from Chief of General Staff, Prince KANIN,
14 to War Minister HATA, Shunroku, it could not be
15 found in the files of the First Demobilization Bureau.

16 "Date, 23 September 1947, at Tokyo.

17 "Signed, MIYAMA, Yozo."

18 The Demobilization Bureau as successor to
19 the War Ministry was the proper custodian of that
20 letter. There is ample evidence in the record that
21 many of its files were destroyed in the great fire
22 raids.

23 In the hopes that the letter might be found
24 among the personal effects of General HATA, and in
25 order to check into every possible place where the

1 letter could be, we caused a thorough search to be
2 made of the home and the personal files of General
3 HATA, and introduced the affidavit of Dr. KANZAKI,
4 Japanese counsel, and introduced his affidavit
5 (29,403):

6 "In order to obtain the letter which was
7 sent from the Chief of General Staff, Prince KANIN,
8 to War Minister HATA, Shunroku, in July 1940, I, since
9 spring 1946, have requested the First Demobilization
10 Bureau to take all measures possible to search for the
11 letter but it could not be discovered. Further, with
12 the assistance of Mrs. HATA and her son Shunpachi,
13 I have searched HATA, Shunroku's house with the
14 utmost of my power several times, but I could not
15 discover it."

16 With this, we had done all we could do in
17 our search for the letter, but still the prosecution
18 was successful in keeping out this direct testimony,
19 although the prosecution itself was relying on the
20 rankest kind of hearsay evidence which would never
21 have been accepted in any regular court.

22 THE PRESIDENT: What do you mean by regular
23 court?

24 MR. LAZARUS: National court.

25 THE PRESIDENT: You had better change that

to "national."

1 MR. LAZARUS: It should be "national." I
2 am sorry.

3 SAWADA continues: (29,016)

4 "Some days later, by the orders of Prince
5 KANIN, I wrote a letter. . ." "The letter was
6 sealed and signed by Prince KANIN and he ordered me
7 to deliver it to War Minister HATA. I did so. In
8 this way, General HATA received the letter and I am
9 not quite sure but it might be the following day or
10 the day after that General HATA submitted his resigna-
11 tion, and then the YONAI Cabinet resigned en bloc.

12
13 "H.I.H. Prince KANIN, besides being the
14 Chief of the General Staff, was a member of the
15 Emperor's Household and a father of the Army in age,
16 rank, experience, etc., and it was quite natural that
17 General HATA, although War Minister, nevertheless, as
18 a loyal subject of the Emperor, was compelled to obey
19 his strong demand."

20 Here, then, is why and how HATA resigned.
21 HATA, having been appointed War Minister by direction
22 of the Emperor, had faithfully, according to all
23 credible testimony, supported the YONAI Cabinet and
24 its anti-tripartite policy. The Chief of the Imperial
25 General Staff was HATA's superior and, upon receipt

1 of a letter from him, delivered by the Vice-Chief of
2 the Imperial General Staff, HATA resigned. As
3 SAWADA says: "General HATA, although War Minister,
4 nevertheless as a loyal subject of the Emperor was
5 compelled to obey his strong demand."

6 It will be noted that the man in the War
7 Ministry who worked to bring about HATA's enforced
8 resignation through orders by the Chief of the
9 Imperial General Staff was ANAMI, the Vice-Minister.
10 Of him, we shall have more to say shortly. Here is
11 unequivocal testimony that HATA was not a member of
12 the gang which was seeking to smash the YONAI Cabinet.
13 It states clearly that the need for a change in
14 cabinets was not the opinion of General HATA. And
15 the Chief of the General Staff "was truly sorry for
16 the War Minister that such an extreme measure had to
17 be taken. . ." If HATA had been a member of the clique
18 which sought to overthrow the cabinet, all these con-
19 ferences between the Vice-Chief of the General Staff
20 and the Vice War Minister would not have been neces-
21 sary. That it was ANAMI who played the leading role,
22 and that HATA was not privy to these machinations
23 that SAWADA's testimony revealed is corroborated by
24 TANAKA (29,409). He states:
25

"On the 14th of February 1945, I met General

1 ANAMI and at that time he told me that he regretted
2 very much the part he had played in opposing General
3 HATA and in bringing about the resignation of General
4 HATA as War Minister in the YONAI Cabinet and he also
5 told me the details of the opposition within the War
6 Ministry against General HATA. General ANAMI had been
7 Vice-Minister of War under General HATA in the YONAI
8 Cabinet."

9 Now let us examine the one document on which
10 the prosecution relies to prove its point that HATA
11 was a prime mover in the downfall of the YONAI Cabinet.
12 The exhibit 532 is a series of excerpts from KIDO's
13 Diary immediately preceding and following the downfall
14 of the YONAI Cabinet. KIDO quotes Vice-Minister of
15 War ANAMI as follows: (6,243)

16 "Now when a political change may be unavoid-
17 able within the next four or five days, and the
18 military have been perfecting preparations to meet
19 the abrupt changes in the latest world situation, the
20 character of the YONAI Cabinet is not at all suitable
21 for making negotiations with Germany and Italy and it
22 might even cause a fatal delay. The conclusion is that
23 a cabinet change is inevitable in order to face this
24 grave situation. The army unanimously will support
25 Prince KONOYE's candidacy. Upon meeting Prince KONOYE

1 after his return to Tokyo, the War Minister will take
2 the opportunity to submit an important proposal to
3 Premier YONAI."

4 We see, then, that as early as 8 July,
5 ANAMI was stating that "the YONAI Cabinet was not at
6 all suitable" and "that a cabinet change is inevit-
7 able." He states at the end that the War Minister
8 will make an important proposal to the Premier. This,
9 undoubtedly, refers to the note that the anti-YONAI
10 clique was intending to have HATA submit to YONAI
11 and which, through their control of the press, they
12 apparently published that HATA did send it to YONAI.
13 This is the note that YONAI denies flatly HATA ever
14 sent him. The machinations of this clique become
15 clearer as we go on.

16 On the same date, 8 July, and in the same
17 exhibit, KIDO then quotes the Chief Aide-de-Camp
18 (6,243):
19

20 "In the army general staff office in recent
21 days, the officers forming the central core have pre-
22 sented their opinions to the leading staff members
23 from the viewpoints of both political and military
24 policies, as they anticipate that the personnel of
25 the present government will never be able to suffi-
ciently cope with the latest world situation. As a

1 result, it is understood that the Chief of the Army
2 General Staff, Prince KANIN, told the War Minister
3 about the matter, and the War Minister has been much
4 concerned about what measures to take. Such being
5 the case, the expression of resolute determination by
6 the War Minister may well depend upon the behavior of
7 the cabinet itself. And so on . . ."

8 Here again, we find an expression of General
9 Staff dissatisfaction with the YONAI Cabinet, and
10 the Chief of the General Staff KANIN speaks to the
11 War Minister about it, "and the War Minister has been
12 much concerned about what measures to take." Does
13 that sound like a willingness, a desire, an intention
14 on the part of HATA to destroy the YONAI Cabinet? On
15 the contrary, it seems the other way around, else why
16 should HATA be concerned when the Chief of the General
17 Staff tells him of the General Staff's lack of satis-
18 faction with the YONAI Cabinet? If HATA were prepared
19 to overthrow the YONAI Cabinet this excerpt would read
20 that the War Minister agreed with the Chief of the
21 General Staff instead of "the War Minister has been
22 much concerned."

24 Under date of 16 July in the same exhibit,
25 KIDO quotes Chief Cabinet Secretary ISHIWATA (6,244):

"War Minister HATA met Premier YONAI after

1 9:00 a.m. this morning and submitted his resignation.
2 When told by the Premier to produce a successor, he
3 replied that an answer may be expected by evening and
4 left. As the army cannot be expected to produce a
5 successor, the Premier, after calling an extraordinary
6 cabinet meeting today, will probably have to go to the
7 Hayama Imperial villa to submit a mass resignation."

8 There is no refusal here, as the prosecution
9 claims, by HATA to name a successor. Had HATA been
10 privy to the plans to destroy the YONAI Cabinet and
11 had he resigned deliberately in order to overthrow
12 the YONAI Cabinet, he would promptly have told the
13 Premier that no one would be appointed to succeed
14 himself, but instead HATA told YONAI that "an answer
15 may be expected by evening." The letter from KANIN,
16 ordering HATA to resign, had come swiftly and suddenly,
17 and HATA could not know whether a new War Minister
18 who would support in the cabinet the army's desire
19 for the Tripartite Pact would be named. HATA, it must
20 be remembered, would be only one of the Three Chiefs
21 who would name the new War Minister, one of the other
22 three being the Chief of the General Staff, Prince
23 KANIN, who had ordered HATA to resign in order to bring
24 about the downfall of the YONAI Cabinet.
25

Even the Chief Cabinet Secretary, realizing

the situation, states that the army "cannot be
1 expected to produce a successor." On the same date,
2 and in the same exhibit, KIDO records Vice-Minister
3 ANAMI (6,246) as having told the Chief Aide-de-Camp
4 as follows:

5 "Received a phone call from Vice-Minister
6 ANAMI of the War Ministry, according to whom the state
7 of affairs leading to the (War) Minister's resignation,
8 is as follows: Several days ago a memorandum contain-
9 ing the army's opinion on the present situation was
10 submitted to the Premier, who summoned the War Minister
11 this morning and telling him that the army's idea was
12 different from that of the present cabinet, asked him
13 bluntly to resign in case of inconvenience. Thereupon
14 the War Minister at once submitted his resignation.
15 As the Premier further asked him to recommend his
16 successor, the Three Chief officers' meeting was held
17 from 2:30 p.m. but because of the foregoing situation
18 it was extremely difficult to make any recommendation."
19

20 Here, at last, we get some inkling as to the
21 note allegedly sent by HATA to YONAI and it is more
22 than likely "the important proposal" that ANAMI
23 referred to previously in this same exhibit. Now we
24 see that it was "a memorandum containing the army's
25 opinion" which had been submitted to the Prime Minister

several days previously and, since this is the 16th
1 day of July, that would place it around the 12th day
2 of July, the day the note was allegedly sent by HATA.
3 It does not state here that HATA sent the memorandum
4 to YONAI. It says the memorandum "was submitted."

5 ANAMI, who is a leading member of the clique, which
6 is in the process of overthrowing the YONAI Cabinet,
7 continues giving his version of the event, and states
8 that YONAI asked HATA to resign. This, if the
9 Tribunal please, is the prosecution's own evidence
10 that YONAI "asked him (HATA) bluntly to resign."
11

12 And yet in Point Three which we are now discussing,
13 the prosecution contends that HATA resigned in order
14 to overthrow the YONAI Cabinet and then deliberately
15 refused to name a successor. This is, indeed, a
16 pretty case of blowing hot and blowing cold. The
17 prosecution, of course, although it has introduced
18 evidence that HATA resigned of his own volition and
19 in the very same exhibit that HATA had been ordered
20 to resign by the Prime Minister himself, chose the
21 story which it felt was most harmful to HATA.

22 Continuing the same date and the same exhibit
23 (6,247), KIDO states:

24 "Premier YONAI came to Hayama from Tokyo at
25 6:40 p.m. and explained the details of the resignation

1 en bloc. It was about as I have set it down. As a
2 result of the conference of the Three Chiefs, it was
3 said that although the selection of a successor was
4 not being refused, it was difficult to choose one and
5 no forecast was possible."

6 "Premier YONAI in announcing to the Cabinet
7 his decision in favor of a resignation en bloc did not
8 as was usual in the past call each minister separately
9 to his room and talk to him. Instead he assembled all
10 the members in the cabinet meeting room and stating
11 first that this was not a cabinet meeting, expressed
12 his decision. At this, War Minister HATA scowled, but
13 stood up and made a speech. That is the story."

14 Here, again the prosecution, with its own
15 exhibit, contradicts one of its own main contentions
16 against HATA. The prosecution has contended that HATA
17 refused to name a successor as War Minister in the
18 YONAI Cabinet, yet here in this prosecution exhibit
19 it is stated "the selection of a successor was not being
20 refused"!

21 Now let us see what YONAI had to say about
22 the selection of a successor (28,919). YONAI confirms
23 the above-quoted statement from KIDO's Diary that "the
24 selection of a successor was not being refused" and
25 that "it was difficult to choose one":

1 "I asked HATA to recommend someone to be the
2 next War Minister. HATA immediately went out saying
3 that the successor would be decided in the Three
4 Chief's Conference. This Conference was composed of
5 the Chief of Staff, the Inspector General of Military
6 Education, and the War Minister. It was their duty
7 to name the new War Minister. He returned in the
8 evening looking very worried and said there was no
9 man who would be the successor to the post. His face
10 looked very pensive because he was conscious that
11 this lack of the successor would become the cause of
12 the fall of the cabinet -- consequently he himself
13 would be this cause. I read this feeling in his face,
14 and after the general resignation of the cabinet,
15 called HATA to my room and said, as nearly as I can
16 remember: 'I can understand your situation -- you
17 have suffered very much. As for me, however, I do
18 not blame you at all. I understand. Take it easy
19 and do not worry.' I shook his hand and HATA smiled
20 a sad smile -- a smile of resignation, peculiar to a
21 Japanese. His situation was indeed a pitiful one."

22 Thus defense witness YONAI confirms the
23 prosecution's own evidence that appointment of a succeed-
24 ing War Minister "was not being refused." If HATA
25 were intending to destroy the YONAI Cabinet, he would

1 have informed YONAI immediately that there would be
2 no succeeding War Minister and that would have ended
3 the matter. But, as both YONAI and the prosecution's
4 own evidence show, HATA attempted, by attending the
5 Three Chiefs' meeting, to find a succeeding War
6 Minister, and thus to save the YONAI Cabinet although
7 he, HATA, had resigned after receipt of a letter from
8 his superior, Prince KANIN.

9 Continuing in this same exhibit, we find still
10 another turn in the prosecution's own evidence as to
11 what really happened to bring about the resignation
12 of the YONAI Cabinet. Although as stated above, KIDO
13 says: "Premier YONAI came to Hayama at 6:40 p.m. and
14 explained the details of the resignation en bloc. It
15 was about as I have set it down," immediately after
16 his recording of ANAMI's version of what had happened,
17 namely, that YONAI had ordered HATA to resign (6,246)
18 just a few pages later (6,250), and one day later in
19 the diary, at a council of the senior statesmen, KIDO
20 told them when they asked for the details: "Lord
21 Privy Seal . . . I don't know the details but the gist
22 of what I learned of the situation from Premier YONAI
23 yesterday at Hayama is as follows: The Army thinks
24 that the present cabinet is not adequate to carry out
25 a policy which will suit the present ever-changing

1 world situation and which will not be regretted later.
2 It seems to show also a tendency to form a political
3 reapproachment with Germany and Italy. It also feels
4 that even in domestic affairs the government, being
5 separated from the people will be unable to obtain
6 satisfactory results in a number of policies, and
7 that unless the political structure is strengthened,
8 the government will be unable to cope with the present
9 emergency. In a word since the War Minister's opinion
10 is different from that of the present cabinet, he
11 cannot fulfill his duty as the leader of the Army.
12 Hence he has come to the point of resigning."

13 Here is the perfect example of the value of
14 hearsay testimony in KIDO's Diary. In the same
15 prosecution excerpt, KIDO records a version of the
16 downfall of the YONAI Cabinet that the Vice-Minister
17 of War told to the Chief Aide-de-Camp, who, in turn,
18 told it to KIDO who recorded it in his diary. This
19 version was that YONAI ordered HATA to resign. The
20 same day and a few lines later in the diary, KIDO says
21 after YONAI's explanation of the event, "It was about
22 as I have set it down." One day later in his diary,
23 KIDO, this time telling the event to the council of
24 senior statesmen, says HATA had come to the point of
25 resigning and but a few lines before ANAMI's version,

1 KIDO had recorded Chief Cabinet Secretary ISHIWATA's
2 version that "War Minister HATA met Premier YONAI
3 after 9:00 a.m. this morning and submitted his
4 resignation." And, to complete the circle after
5 KIDO recorded these three different versions of the
6 event in his diary, we have KIDO's testimony under
7 oath before this Tribunal; we have this question
8 and answer on redirect examination (31,613):

9 "Q Marquis KIDO, last Monday when
10 Mr. Keenan asked you if General HATA by his resigna-
11 tion broke up the YONAI Cabinet you said it appeared
12 so. Can you clear that, please?

13 "A The situation at that time was that
14 War Minister HATA did not resign of his own volition.
15 That is what I meant to say."

16 Here, then, we have additional confirmation
17 of the defense contention that HATA did not seek to
18 destroy the YONAI Cabinet. "HATA did not resign of
19 his own volition." How, out of this evidence, can
20 the prosecution contend that HATA was a prime mover
21 in the overthrow of the YONAI Cabinet? The prosecu-
22 tion's position in this matter, based on its own
23 evidence, is ridiculous.

24 Continuing with this same prosecution exhibit,
25 we next learn (6,254):

1 "When War Minister HATA came to Hayama
2 today to report to the throne on personnel, he told
3 me what the opinion of the army is. Generally it
4 was the same as that which KIDO had heard from
5 YONAI yesterday. I told him that this business was
6 very regrettable, he and I felt it was one consolation
7 that we could see where the responsibility lay,
8 although there had been up till now many uncertain
9 attitudes. HATA, who was once Chief Aide-de-Camp
10 and who knows how busy I am at such times, was
11 extremely sorry and had tears in his eyes."

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1 It will be noted that this entry refers to the
2 previous day's entry when KIDO said "it was about as
3 I have set it down" and the passage almost immediately
4 preceding that was ANAMI's version that YONAI had
5 ordered HATA to resign. And going back still farther,
6 we find ISHIWATA's version that HATA resigned. Bearing
7 in mind that the Emperor himself had caused HATA to
8 become War Minister, it is highly significant that the
9 Emperor should say to the man he had made War Minister
10 in order to fight the Tri-Partite Pact, "I told him
11 that this business was very regrettable, but I felt
12 it was one consolation that we could see where the
13 responsibility lay, although there had been up till
14 now many uncertain attitudes." The Emperor says to
15 HATA, "We can see where the responsibility lay,"
16 meaning that HATA and the Emperor saw eye to eye as
17 to the group which caused the downfall of the YONAI
18 Cabinet and that group did not include HATA because
19 in the rest of the passage it will be noticed that the
20 Emperor used the pronoun "I".

21 The Tribunal well knows how the Emperor had
22 excoriated the previous War Minister when he had dis-
23 pleased the Emperor, and surely if HATA had been
24 responsible for the overthrow of the YONAI Cabinet,
25 the Emperor would not have received him so cordially

and told him that they, the Emperor and the man he had
1 made War Minister, could see where the responsibility
2 for the overthrow of the cabinet lay. That the Emperor
3 wanted the army to support the YONAI Cabinet is made
4 crystal-clear in this same prosecution exhibit when
5 under date 16 July, KIDO recorded (pros. Ex. 532,
6 T. 6,248):

7 "In the course of my audience with the Emperor,
8 the Emperor told me the circumstances surrounding his
9 summoning of War Minister HATA at the time when the
10 Imperial order for cabinet formation was given to
11 Admiral YONAI.

12 The Emperor said that he had not shown him
13 any special favor, although there was a gross misunder-
14 standing about the matter. He had been told that
15 KONOYE also was of the opinion that it would be well
16 to question HATA, and that YUASA, too, thought that
17 questioning would be all right. He had called HATA
18 and asked him whether the army was willing to cooperate
19 with YONAI, to whom he, the Emperor, had given the
20 Imperial order. As HATA had replied that the army
21 would cooperate, the Emperor had said that that was
22 fine and had not given any orders."

23
24 So, then, if a few short months later, HATA
25 had violated his pledge and overthrown the YONAI Cabinet,

would the Emperor have received HATA so well? And
1 would HATA, if he had deliberately wrecked the Cabinet,
2 as the prosecution contends, have been "extremely sorry
3 and had tears in his eyes" when he had this interview
4 with the Emperor, and the Emperor told him "we could
5 see where the responsibility lay"? Therefore, from all
6 these passages that we have quoted from the prosecution's
7 own evidence, it can be seen that HATA did not resign
8 voluntarily from the YONAI Cabinet, had no intention of
9 wrecking it, did not refuse to name a successor. Every
10 credible bit of evidence points that HATA faithfully
11 followed the Emperor's request to support the YONAI
12 Cabinet, that HATA did not sponsor the Tir-Partite Pact,
13 for, as we have seen, it never came up for cabinet dis-
14 cussion. We have purposely examined every scrap of
15 evidence on this point, pro and con, in order to give
16 the Tribunal the full picture. The Tribunal will note
17 that nowhere in KIDO's voluminous recordings of the
18 various versions of the event, is there any mention
19 made of a note sent by HATA to Premier YONAI. Surely
20 this should convince even the prosecution that their
21 newspaper article is worthless.

23 Additional evidence that HATA did not resign
24 voluntarily in order to destroy the cabinet, but, on
25 the contrary, was a supporter of the cabinet, is found

in the examination of the accused MUTO by the Tribunal.

1 In answer to a question put by the Tribunal, he stated
2 (T. 33,244):
3

4 "When I returned to Tokyo on the 9th or 10th of
5 July, I found that the War Minister had received a very
6 strong document from the General Staff embodying its
7 strong opinions. This also is included in my affidavit.

8 "Because of this note, the War Minister's
9 position ... War Minister HATA's position had become
10 very difficult. The reason was that when War Minister
11 HATA assumed his portfolio he received a very strong
12 demand from the Emperor that he cooperate with Prime
13 Minister YONAI. Therefore, War Minister HATA, who since
14 the establishment of the YONAI Cabinet had fully cooper-
15 ated with it, was suddenly faced by those demands of the
16 General Staff which might even lead to a demand for the
17 general resignation of the cabinet."

18 Here again, then, we find additional direct
19 testimony that HATA supported and cooperated with the
20 YONAI Cabinet, and this evidence was elicited by the
21 Tribunal itself. MUTO says, "War Minister HATA's pos-
22 ition had become very difficult." And this is exactly
23 what YONAI, ARITA, SAWADA and TANAKA told the Court.
24 HATA, because of his own inclinations as the above
25 witnesses testified, and because of the Emperor's orders

1 to cooperate with the YONAI Cabinet, was being forced
2 to resign by orders of his superior, H.I.H. Prince KANIN,
3 Chief of the Imperial General Staff, who, with Vice
4 War Minister ANAMI and the other staff officers, as
5 KIDO noted in his previously quoted prosecution exhibit,
6 wanted the YONAI Cabinet and HATA out of the way because
7 they considered them inadequate to meet the changing
8 world conditions. To them this meant signing up with
9 Germany and Italy who were apparently then victorious in
10 Europe.

11 As to whether HATA refused to name a War Minis-
12 ter to succeed himself, Mr. English, cross-examining
13 the accused MUTO, brought out this testimony (T. 33,246):

14 "Q General, it is a fact, isn't it, that HATA
15 resigned on 16 July, 1940?

16 "A Yes.

17 "Q It is also a fact that when asked by Premier
18 YONAI to recommend a successor, HATA reported to the
19 Premier on the same day, that is, 16 July 1940, that
20 the Three Chiefs' Conference had no one to recommend
21 as his successor for War Minister?

22 "A What you have just said is at variance with
23 what I know of the facts.

24 "Q And did not the failure of the military to
25 recommend a successor for War Minister HATA force the

resignation of the YONAI Cabinet?

1 "A I heard that on the 16th, when Premier YONAI
2 had a conference with HATA the two failed to come to an
3 agreement of views, and, thereupon, Premier YONAI said,
4 'I must ask you to resign' . . . told HATA 'I must ask
5 you to resign.' Furthermore, Premier YONAI is reported
6 to have told War Minister HATA on that occasion: 'I
7 don't suppose that we will be able to find a successor
8 for your post.' General HATA replied: 'Well, I can't
9 say anything here by myself. I will have to go back to
10 the War Ministry and see the results of the Three Chiefs'
11 Conference and then return to the War Ministry.'

12 "Then the Three Chiefs -- the Three Army Chiefs --
13 met with each other and although I do not know the con-
14 tents of their conference, they finally came to the con-
15 clusion that there was no one who wished to accept a
16 post as War Minister in succession to General HATA.
17 Thereupon, General HATA returned to the Cabinet and
18 reported that decision to the Prime Minister."

19 Here again we have testimony that there wasn't
20 refusal by HATA to name a successor. He didn't refuse
21 but he went to the conference. If he had deliberately
22 intended to destroy the Cabinet, and plans had been laid
23 by him, he would have told the Premier that he would
24 refuse to name a successor and the Tribunal will note
25

1 Mr. English didn't say HATA refused but instead in his
2 question he conceded " . . . the Three Chiefs had no one
3 to recommend as his successor."

4 We have still another source of confirmation
5 that HATA did not seek to wreck the Cabinet, as the
6 prosecution contents. In Mr. Tavenner's lengthy open-
7 ing address on Tri-Partite Pact phase of the prosecution's
8 case, he states (T. 5,865):

9 "After several attempts to bring about the
10 downfall of the YONAI Cabinet had proved unsuccessful,
11 the military resorted to the device of having the War
12 Minister resign."

13 Nowhere, in all the evidence that follows, nor
14 in cross-examination by the prosecution of our defense
15 witnesses is it even suggested that HATA was in on any
16 of these "several attempts" to destroy the YONAI Cabinet.
17 Mr. Tavenner carefully refrains from stating HATA was
18 responsible. He states "the military resorted to the
19 device of having the War Minister resign." Now, if HATA
20 intended to destroy the YONAI Cabinet he could very
21 easily have resorted to tactics of creating disagreement
22 on policy during the life of the cabinet. The Tribunal
23 has heard such evidence that War Ministers both before
24 and after HATA did that and caused cabinets to collapse.
25 Yet nowhere is there one word that HATA made speeches or

1 brought about dissensions in the cabinet. The evidence
2 is overwhelming he always supported the cabinet.

3 The final evidence that HATA was not pro-
4 Tri-Partite Pact is to be found again in the prosecu-
5 tions own evidence. We turn again to Mr. Tavenner's
6 opening remarks in the prosecution's Tri-Partite phase.
7 Speaking of the HONOYE Government which succeeded the
8 YONAI Cabinet, he stated (T. 5,865):

9 "The new government formed a commission of
10 twenty-four leading persons consisting mostly of follow-
11 ers of the policy of collaboration with the Axis powers
12 with the aim of planning suitable action for the adjust-
13 ment of state affairs on an authoritarian basis."

14 HATA was not one of these persons. And
15 wouldn't he be one of the "leading persons consisting
16 mostly of followers of the policy of collaboration
17 with the axis powers", if the prosecution contention
18 that he was pro-Tri-Partite Pact were true? It will be
19 remembered that HATA was still in Tokyo, having been
20 made military councillor, which is the interim position
21 to which all high ranking Japanese officers are appointed
22 between assignments, while awaiting orders to their new
23 command. While HATA was Cabinet Councillor, there
24 never was a meeting, a conference or any action taken.
25 The post is merely a temporary honorific one for high

ranking officers. HATA remained in Japan till he assumed
1 his post in China in 1941.

2 Continuing with Mr. Tavenner, he told this
3 court that in order to implement the provisions of the
4 newly signed Tri-Partite Pact, various commissions were
5 formed (No. 5,886). "The commissions formed under the
6 provisions of the Tri-Partite Pact included in their
7 membership the accused...." and Mr. Tavenner names
8 six accused, four of whom were military men. And again,
9 HATA is not one of them. These two instances are perfect
10 evidence that HATA was not personally, and was not con-
11 sidered by others, a supporter of the Pact.

12 For the clinching evidence that even the Germans
13 did not consider HATA as pro-Tri-Partite Pact, we invite
14 the Tribunal's attention to two prosecution exhibits
15 which we contend clinch our position for us, if, indeed,
16 additional evidence were needed in view of all the above-
17 reviewed evidence. Prosecution exhibit 1272 (T. 11,352)
18 shows Germany sought to honor with awards "certain Japan-
19 ese for receiving German decorations on the occasion of
20 the Tri-Partite Pact." Nine Japanese are named in the
21 exhibit, six of them accused in this trial. But nowhere
22 do we find HATA's name. The awards are to the support-
23 ers of the Tri-Partite Pact and "this concerns men of
24 the immediate group surrounding TOJO who will presumably
25

retain for some time their decisive influence on the
1 shaping of Japanese policy." And still the prosecution
2 alleges HATA is tied in with TOJO and that HATA put
3 TOJO in as succeeding War Minister! They don't even
4 consider HATA here as in the "immediate group surround-
5 ing "OJO", or as a man with any "influence on the shap-
6 ing of Japanese policy." This certainly looks as though
7 only the prosecution considered HATA pro-Pact and anti-
8 YONAI. And it isn't because HATA has a command in the
9 field and is no longer in the War Ministry, because one
10 of the accused gets a medal although he too "has now
11 received an important field command." (T. 11,355) Every-
12 one of the nine citations is for pro-Pact and pro-
13 collaboration support. But HATA is not among them.

We proceed to the next Prosecution exhibit on
15 this point and learn (exhibit 2247, T. 16,181) that on
16 the anniversary of the Pact, five high Japanese, includ-
17 ing three accused, received German awards. Again, HATA
18 was not among them. And all this, we again stress, is
19 prosecution evidence. This surely lays at rest the
20 contention that HATA was pro-Pact and anti-YONAI. Not
21 before he was War Minister, not while he was War Minister,
22 did HATA say or do anything to show he was pro-Pact, and
23 even the surrounding evidence, as above quoted, after
24 HATA was War Minister, fails to give the prosecution a
25

1 leg to stand on, when it contends HATA wrecked the YONAI
2 Cabinet as his part in the alleged conspiracy. Surely,
3 if he had performed such yeoman service in the cause of
4 the conspiracy, he would not have been so pointedly
5 ignored by the Germany as the above two prosecution
6 exhibits shown. And he would not have been ignominiously
7 kept in the background as a mere military councillor,
8 with no meetings, no conferences, no one to counsel
9 until finally, in April of 1941, he was sent to China,
10 where he would be out of the way.

11 TANAKA and KIDO give the answer to HATA's
12 silence at all times (except for only one occasion)
13 on all matters political. He simply was an officer
14 at all times, never a politician, never engaged in
15 politics. TANAKA says (T. 29,410), "A further incident
16 which served to aggravate the antipathy felt by those
17 in high army circles (against HATA) was the following:
18 General HATA was strongly opposed to the participation
19 by army officers in politics and when he became War
20 Minister for the first time, he addressed all the offic-
21 ers in the War Ministry Building. The gist of the speech
22 was as follows:

23 "The present army is not trusted by the Emperor
24 and it is the first duty of the army to endeavor to
25 recover the Emperor's trust. In order to achieve this

1 objective, all military personnel should absolutely cease
2 any participation in politics and return to their regular
3 duties of soldiering."

4 And as an example of his enforcing this order
5 of "no politics", we again refer the Tribunal to TANAKA's
6 testimony, already quoted in this summation, that HATA
7 reprimanded and punished the colonel who had in a speech
8 in Sendai attacked the United States and England.

9 KIDO puts it best, as to HATA's not being a
10 militarist, when after his 300 page polemic against
11 militarists, he was questioned and answered as follows
12 (p. 31,236):

13 "Q Marquis KIDO, in your affidavit you refer to
14 the militarists and the fact that you consistently
15 fought them and opposed them. Do you include General
16 HATA in this category?

17 "A I do not include General HATA."

18
19 It is overpoweringly and overwhelmingly clear,
20 we respectfully submit, that all the evidence above
21 reviewed smashes completely the prosecution's contention
22 that HATA was pro-Tripartite Pact and that he was a
23 "prime mover in the overthrow of the YONAI Cabinet."

24 Next, we turn our contention to the prosecu-
25 tion's allegation that HATA "put into office as War
Minister, the accused "OJO." Let us examine the evidence.

1 First, we look at the unchallenged evidence given before
2 the Tribunal by NODA, Kengo, Chief of the Personnel
3 Affairs Bureau in the War Ministry at the time, who
4 stated TOJO's appointment was in the regular course of
5 standard Japanese army procedure (T. 29,394).

6 "After the resignation of the YONAI Cabinet,
7 as I was Chief of the Personnel Affairs Bureau, I used
8 the most scrupulous care and attention in recommending
9 the man to succeed General HATA as War Minister... I
10 took into full consideration the views prevalent in the
11 various bureaus of the War Ministry and the wishes of
12 the General Staff, and I consulted fully with the Vice-
13 Minister of War, General ANAMI. After all these consult-
14 ations and after a thorough-going study, I decided that
15 under the then existing circumstances Lieutenant-General
16 TOJO was suitable, and I, as Chief of the Personnel
17 Bureau, recommended him to War Minister HATA as the
18 succeeding War Minister. There were others who were
19 considered for the position of new War Minister, but
20 they were already in other important positions and
21 it was difficult to effect a speedy transfer.
22

23 "Lieutenant-General TOJO, on the other hand,
24 was in Tokyo, holding the position of Inspector-General
25 of the Air Force, and he had formerly been Chief of the
Military Affairs Bureau and of the Maintenance Bureau.

Further, he had once been the Vice-Minister of War in

1 the HIRANUMA Cabinet. I considered him a suitable
2 military administrator and it was the feeling in army
3 circles that no one except Lieutenant-General TOJO
4 would do, so under those circumstances, I recommended
5 him as the succeeding War Minister. In accordance
6 with this recommendation General HATA submitted the
7 name of General TOJO to the Three Chiefs' Conference
8 held on 18 July 1940. The Three Chiefs' Conference
9 was unanimous in recommending Lieutenant-General TOJO,
10 and General HATA's submitting the name of General TOJO
11 to the Three Chiefs' Conference was in accordance with
12 the standing procedure for such matters in the War
13 Ministry. As a matter of fact, neither War Minister
14 HATA nor I had any personal relations with HATA, nor
15 I had any personal relations with Lieutenant-General
16 TOJO in the past nor any intimate relations with him."

17
18 Further, on Mr. English's cross-examination,
19 General MUTO confirmed General NODA's testimony that
20 there was nothing irregular in TOJO's recommendation
21 as succeeding War Minister (33,247):

22 "Q Then it is true, General, that immediately
23 after the fall of the YONAI Cabinet, the Three Chiefs'
24 Conference recommended TOJO as next War Minister?

25 "A I knew nothing about the content of the
Three Chiefs' Conference. I believe the things

1 happened -- I believe that the testimony of Lieutenant-
2 General NODA, who was the Chief of the Personnel Bureau
3 of the War Ministry, is true on this point."

4 As with the similarly regular recommendation
5 of General MUTO, which we have already covered, Mr.
6 Sutton here also seemed to think it important that
7 HATA could have refused to accept the recommendation
8 that came from the person whose duty it was to make it
9 (here, NODA) (29,299):

10 "Q My question was, did HATA, the retiring War
11 Minister, have authority to recommend for appointment
12 as the new War Minister some person other than the
13 person suggested by you? You may answer yes or no.

14 "A Yes."

15 We don't deny that. But is it significant?
16 What reason does the prosecution give that HATA should
17 refuse to follow the regular Japanese Army system in
18 these two cases? None.

19 If, on the other hand, some other persons
20 had been regularly recommended and HATA had refused
21 to follow the regular procedure and had himself rec-
22 ommended MUTO and TOJO, then the prosecution might
23 have a point. But the fact that HATA followed stand-
24 ard Japanese Army procedure when he didn't absolutely
25 have to is of no moment.

Continuing its cross-examination, the prosecution cleared up for the defense a fine point and helped our contention that HATA did not wilfully wreck the YONAI Cabinet and did not plan to do it. This cross-examination question and answer do it.

(29,399):

"Q Were you requested by General HATA at any time prior to the resignation of the YONAI Cabinet to suggest the name of a person to succeed him as War minister?

"A No."

Had HATA deliberately wrecked the YONAI Cabinet, he'd have known he was going to do it and would have told NODA before he resigned, not after. Further, if HATA had had any preference for TOJO as next War Minister, he'd have ordered NODA to recommend TOJO. Here again, on this point the prosecution comes to our rescue and itself gets this information for us by cross-examining our own witness thusly (T. 29,400):

"Q Was General HATA very desirous that TOJO should be appointed as War Minister to succeed him?

"A The fact of the matter is just this. I expressed my views recommending General TOJO as succeeding War Minister, and General HATA merely agreed with

my recommendation."

1 That kills, but good, through its own cross-
2 examination, the prosecution's contention that HATA,
3 as an act of conspiracy, personally made TOJO next
4 War Minister.
5

6 There is one last point. In continuing his
7 cross-examination, Mr. Sutton asks the following ques-
8 tions and receives the following answers (29,401):

9 "Q Did not General HATA, before KONOYE formed
10 his cabinet, go to the Emperor and recommend to the
11 Emperor that TOJO be appointed as War Minister?

12 "A I do not know about that.

13 "Q And was not this done secretly by War Minister
14 HATA at that time?

15 "A I do not think anything was done secretly.

16 "Q And did not the Emperor state that he thought
17 the procedure wrong because Prince KONOYE was still in
18 the midst of forming his cabinet and had not accepted
19 General TOJO for the post?
20

21 "A I do not know.

22 "Q And did not the Emperor state that he con-
23 sidered the action of War Minister HATA in secretly
24 recommending TOJO as his successor as being overhasty
25 and out of order?

 "A I am hearing such matters for the first time

1 nov. I do not know."

2 NODA, then, had never heard of this. We
3 won't again go into the value of these excerpts from
4 KIDO's Diary. We leave to the Tribunal to determine
5 what such excerpts as these, which go unconfirmed
6 every time the prosecution cross-examined either the
7 accused or the defense witnesses, are worth. We'll
8 examine the excerpt which gave rise to these ques-
9 tions. It states (Ex. 539, T. 6,266):

10 "I was again received in audience this after-
11 noon from 2:25 to 2:50. The Emperor stated that the
12 War Minister had just secretly recommended TOJO for
13 War Minister and Tomoyuki YAMASHITA for Inspector-
14 General of the Air Force, but he thought the procedure
15 was wrong, for Prince KONOYE was still in the midst
16 of forming a cabinet and had not yet accepted TOJO
17 for the post, and, as he thought that the action was
18 rather overhasty, he had asked the War Minister whether
19 he did not think the action as being out of order."

20
21 We point out five things to the Tribunal with
22 reference to this exhibit. The first is that the entry
23 is dated 18 July, 1940, two days after HATA had resigned
24 as War Minister. Secondly, granting for the moment
25 that the excerpt is true, if HATA had deliberately
wrecked the YONAI Cabinet, would he dare face the

1 Emperor and recommend a successor in person, after
2 the Emperor, when the YONAI Cabinet had been created,
3 had ordered HATA to cooperate with it and HATA had
4 promised to do so? That seems most unlikely. And
5 if that had been the case, why didn't the Emperor
6 also excoriate HATA, while he was at it, for wrecking
7 the YONAI Cabinet, if indeed HATA had done so? And
8 the Tribunal has the examples of the Emperor's words
9 to ITAGAMI when he was War Minister and to the men
10 responsible for the signing of the Tripartite Pact
11 later. Thirdly, the Tribunal will note that HATA
12 came to recommend two men -- the new War Minister
13 and the new Inspector-General of the Air Force. It
14 was, therefore, not a special, dark, insidious visit
15 to recommend TOJO. It was a trip such as every re-
16 tiring War Minister must make to the Emperor to
17 recommend his successor and other appointments in the
18 succeeding War Ministry. The only thing here is that
19 KIDO quotes the Emperor as believing "that the action
20 was rather overhasty since MONOYI had not yet accepted
21 TOJO. But this was already two days after HATA had
22 resigned. Had it been done before HATA had resigned
23 or immediately after, it might appear improper or
24 certainly part of a prepared act. Nothing of the
25 sort appears here. Only that the Emperor asked HATA

1 "whether he did not think the action as being out of
2 order," since KONOYE had not yet made an announcement.
3 There's no positive statement that the action was
4 improper. Merely a question by the Emperor that
5 HATA made the recommendation too soon. There's not
6 even a suggestion that the recommendations should
7 never be made. Only that they were made too soon.
8 There's nothing capital here. It is very significant,
9 if the Tribunal please, that HATA also recommended
10 the Inspector-General of the Air Force at the same
11 time. It is thus proven that it was no special trip
12 for the sake of TOJO. It was no conspiratorial act
13 only for the new War Minister, but a normal action
14 by the outgoing War Minister, to perform his last
15 official duties -- recommendation to the Emperor of
16 the new high ranking War Ministry officials. Had it
17 been improper for the old War Minister to make any
18 recommendation at all, then it might look like an
19 attempt to jam through certain appointments. But we
20 have quoted the prosecution exhibit in full so the
21 Tribunal can see for itself the only question was that
22 of timing, not the act of recommending. The act of
23 recommending, was wholly proper.

24
25 The fourth Point in this exhibit we call to
the Tribunal's attention is the fact that when HATA

1 visited the Emperor on the 17th of July, one day
2 after his resignation (exhibit 532) already reviewed,
3 to report on personnel, he did not recommend TOJO,
4 but he did recommend him on his second visit, two
5 days after his resignation. If HATA's resignation
6 and his and the Three Chiefs' recommendation of TOJO
7 had been prearranged, would not HATA have proposed
8 TOJO the first time he visited the Emperor? The
9 prosecution would have us believe it was all part of
10 a plot and that HATA was in on it. Why then didn't
11 HATA immediately recommend TOJO? The answer was
12 secured for us by Mr. Sutton in his cross-examination
13 of NODA, already quoted which revealed that HATA did
14 not ask NODA to recommend a successor till after he,
15 HATA, had resigned as War Minister. Hence, the recom-
16 mendation was not ready the day after HATA resigned but
17 was ready two days later.

18 The Fifth Point we call to the Tribunal's
19 attention is the word "secretly" in the line: "The
20 Emperor stated that the War Minister had just sec-
21 retly recommended TOJO for War Minister" Let us
22 see if indeed this was a "secret" recommendation and
23 also let us see if the recommendation itself was
24 improper on the part of HATA. We'll examine the testi-
25 mony of a man who himself was twice War Minister and

1 was also the subject of this "secret" recommendation.

2 Mr. Keenan, after quoting exhibit 539 to the
3 accused TOJO, proceeded, as follows (36,607):

4 "Q Can you tell us any reason why General HATA
5 should go to the Emperor and secretly suggest to the
6 Emperor that you be made War Minister at that time?

7 "A Well, I could imagine from the standpoint of
8 procedure after I became War Minister.

9 "Q Do you know of any other instance in which a
10 retiring War Minister went secretly to the Emperor
11 to recommend his successor in all the history of
12 modern Japan?

13 "A Yes, I know that. That is this: Shall I
14 explain?

15 "Q If there are other instances, yes, please do
16 so.

17 "A That is always the case. Personnel matters
18 with regard to general officers are done according to
19 the following procedure: Before any appointment is
20 made, an informal recommendation is made to the
21 Throne. There is nothing secret about it. This is the
22 procedure in Japan, and therefore I presume that in-
23 formal recommendation was made. But a question may
24 possibly arise, that is, as to time, when such informal
25 recommendation is made by the War Minister or the Navy

1 minister, depending on the situation. The question
2 arises if the War Minister or the Navy Minister
3 should recommend a candidate for one of the two
4 posts before -- informally to the Throne before the
5 Premier-designate decides on the personnel of his
6 cabinet, because that would give rise to a political
7 issue. The proper procedure is that after the
8 Premier-designate has determined upon the Navy Minister
9 and the War Minister of his cabinet, then the preced-
10 ing Navy Minister and the War Minister make the in-
11 formal recommendation to the Throne. That is the
12 proper procedure. So I presume it is to that fact
13 KIDO is referring when he says in his diary to the
14 effect that the action -- when he mentions in his
15 diary that the action was rather overhasty.

M
O 1 "There seems to be some doubt in your mind
r 2 with regard to making informal recommendations to the
s 2 Throne of the succeeding War Minister, but the proced-
e 3 ure I have mentioned is customary procedure. There is
& 4 nothing secret about it. It is our customary procedure.
W 5 I will repeat it again.
h 6
a 6
l 7
e 7
n 8

"Q No.

8 "A (Continuing) so as to create no doubt.
9 The fact of 'naiso', that is, making an informal sug-
10 gession or recommendation to the Throne, is a customary
11 procedure and there is nothing secret about it. The
12 only question is as to the time such recommendation
13 is made."
14

15 After a short colloquy between Bench and bar,
16 Mr. Keenan continued the cross-examination on this
17 point. We quote it in toto so that the Court may get
18 the full picture including the Language Board's cor-
19 rection at the President's request of the translation
20 of the word "naiso", and the acceptance of that change
21 by Mr. Keenan from "secret" to "informal recommendation."

22 "Q Well, to simplify the matter, Mr. TOJO,
23 and to come back to the KIDO Diary, I will quote his
24 language. He said that the War Minister had just
25 secretly recommended TOJO for War Minister, and I sug-
gest to you that that was the language of KIDO and not

my own. Do you say KIDO was wrong about that?

1 "A In the first place, the translation is
2 mistaken with regard to the word 'naiso' -- informal
3 recommendation. There is nothing secret about 'naiso'.
4 It was because you did not appear to understand what
5 I meant by 'naiso', informal recommendation, that I
6 tried to repeat my explanation to you and received the
7 reprimand of the Court.
8

9 "Q Mr. TOJO, you and I are on even terms:
10 I don't speak Japanese and you don't speak English, so
11 let us refer, if there is a question about it, to the
12 Language Arbitration Board.

13 "THE PRESIDENT: It is most important. We
14 will ask for an immediate determination by the Board.

15 "THE WITNESS: Another point I wish to mention
16 to you is that it is not only you who does not under-
17 stand the meaning of 'naiso', or informal recommendation.
18 Even many of the Japanese gathered here do not know
19 what it means.

20 "LANGUAGE ARBITER (Captain Kraft): The word
21 in question seems to be 'naiso', which, literally trans-
22 lated, means 'informal recommendation'.
23

24 "THE WITNESS: Well, that does not appear to
25 hit the nail on the head, but that is much better.

"BY H. KEENAN:

"Q Now we will proceed to some parts of
1 KIDO's Diary on this very precise subject and see
2 if you can find some changes in the language that is
3 appropriate. I will repeat, with the Court's indul-
4 gence, a short paragraph of four or five or six lines
5 with the corrected statement of 'informally' instead
6 of 'secretly'.

7 "This is KIDO speaking for the moment:

8 "I was again received in audience this
9 afternoon from 225 to 250. The Emperor stated that
10 the War Minister had just informally recommended TOJO
11 for War Minister and Tomoyuki YAMASHITA for Inspector
12 General of the Air Force, but that he thought the
13 procedure was wrong.'

14 "Now, if that translation is correct, Mr.
15 'TOJO, KIDO, the former Lord Keeper, is quoting the
16 Emperor of Japan as saying he thought the procedure
17 was wrong. Do you differ from the Emperor on that
18 point?
19

20 "A No, my opinion does not differ, but I
21 am saying that the question is when that informal
22 recommendation was made. It is the time.
23

24 "Q The entry is of 18 July 1940 and
25 the time is sometime between 225 and 250. Leaving
aside the Pearl Harbor episode, I would take that to

1 mean the afternoon and not in the early morning.

2 "A Well, I don't think that has anything
3 to do with the Pearl Harbor attack.

4 "Q I am asking you if it helped you in
5 answering the question to know that it apparently
6 was sometime between 225 in the afternoon and 250
7 on 18 July 1940 when this procedure took place that
8 we are referring to.

9 "A Well, is that so? In that case I believe,
10 as KILLO himself states here, that the informal recom-
11 mendation was made a little prematurely as to time.

12 "Q May I interrupt?

13 "A Well, I haven't completed my reply.

14 "Q But I wish to make a correction that I
15 think you will accept. Will you permit me to inter-
16 rupt you for a moment?

17 "THE PRESIDENT: Better let him complete
18 his reply, Mr. Chief of Counsel. We are having diffi-
19 culty here.

20 "A May I? It should be this way: On the
21 18th, if Prince KONOYE had not yet decided -- had not
22 yet definitely decided upon the War Minister of his
23 cabinet and an informal recommendation had taken place
24 at such a time, then that procedure was out of
25

order.

1 "Q Now may I ask you a question?

2 "A Please.

3 "Q The correction I was suggesting is that that
4 wasn't what KIDO said; that was KIDO quoting the
5 Emperor of Japan. Did you get that point?

6 "A Yes, very well.

7 "Q And KIDO said the Emperor told him that
8 Prince KONOYE was still in the midst of forming a
9 cabinet and had not yet accepted TOJO for the post.
10 Do you recall hearing that as an excerpt from his
11 diary?

12 "A Yes.

13 "Q Now, Mr. TOJO, I think you and I can agree
14 on one thing, that you turned out to be a rather
15 important member of Prince KONOYE's Cabinet, didn't
16 you?

17 "A Yes, I became an important member.

18 "Q Now, can you shed any light on the subject
19 matter of why this unusual procedure was adopted of
20 the outgoing War Minister who caused the fall of the
21 YONAI Cabinet going to the Emperor and suggesting you
22 as the War Minister for the new cabinet, even before
23 Prince KONOYE had made his own recommendation? Can
24 you help us on that subject? I am suggesting to you
25 that someone was awfully anxious to have you step in

as War Minister at that time.

1 "A I do not affirm any such assumption, and
2 furthermore, if you will let me say it, there is
3 nothing unusual or strange about the outgoing War
4 Minister informally recommending to the Throne the
5 succeeding War Minister.
6

7 "Q Well, the Emperor thought this procedure
8 very strange, didn't he? And he said so to KIDO.

9 "A That is why I took such pains, even to the
10 extent of receiving a reprimand from the Court, to
11 explain the situation at that time. Now, this situ-
12 ation is not any too easy to understand, Mr. Chief of
13 Counsel. If a very detailed explanation were made
14 of the procedure and the situation, then perhaps you
15 might understand. I am suggesting to you that it is
16 a very difficult problem to understand.

17 "Q I am suggesting to you, Mr. TOJO, that you
18 are making it very difficult for us to understand it,
19 and I don't mean to be unkind about it, but I am
20 suggesting that the then Lord Keeper of the Privy
21 Seal quoted the Emperor of Japan as saying that this
22 was an improper procedure, and an over-hasty action.
23 That is what the Emperor said to KIDO if KIDO told
24 the truth, and I am therefore asking you --
25

"A I understand the situation very well. I

1 can also understand what KIDO states there, and I
2 furthermore understand what the Emperor felt or was
3 thinking very well -- what the Emperor said very well.

4 THE MONITOR: Strike out the first inter-
5 pretation.

6 "Q What I am suggesting is, if I may be permitted,
7 Mr. TOJO, I am not talking about suggestions made to
8 the Emperor for cabinet positions; I am talking about
9 this particular case where a suggestion was made by
10 the outgoing War Minister for his successor to the
11 Emperor before the Prime Minister had made up his
12 mind about it. That is what I am talking about.

13 "A Well, the situation was as I have already
14 explained to you in quite even unnecessary detail so
15 far. The point I have been endeavoring to make clear
16 to you is this: There is nothing strange or out of
17 the ordinary with regard to the procedure of 'naiso'
18 or informal recommendation. The doubt arises only
19 when an outgoing War Minister makes any such informal
20 recommendation to the Throne before the Premier
21 Designate -- in this case Prince KONOYE -- had de-
22 termined on the War Minister or the Navy Minister of
23 his cabinet. The procedure would be out of the
24 ordinary.
25

THE MONITOR: Japanese court reporter.

(Whereupon, the Japanese Court reporter
1 read.)

2 "A (Continuing) And so in this particular
3 case the question then arises -- the doubt then arises
4 in connection with such a procedure whether the time --
5 the proper time -- the recommendation was made at
6 the proper time and in a proper manner. If I said just
7 a few more words, I suppose the situation will be
8 even more clear.

9 "This is the situation: The War Minister
10 and the Navy Minister of a cabinet are formally
11 recommended to the Throne by the cabinet itself, but
12 candidates for these two offices, being an active
13 general officer or an admiral, there is the necessity
14 for the army and navy respectively to make an informal
15 recommendation to the Throne, in addition or aside
16 from the previous procedure carried out by the cabinet.

17 "Q Have you finished?

18 "A Yes, I have."
19

20 This, then, should completely set at rest the
21 contention that there was anything secret about HATA's
22 recommendation to the Emperor and that there was any-
23 thing sinister in the act of recommendation itself.
24 The recommendation was correct procedure, always
25 followed by the outgoing War Minister. The recommendation

1 was not made "secretly," but was an "informal
2 recommendation," and the only question was that of
3 time. Although the cabinet had resigned two days
4 before, and the Three Chiefs had already nominated
5 TOJO, Prince KONOYE, the Premier-designate, had not
6 yet, it seems, gotten around to making the formal
7 public announcement. He did so the next day.

8 This, then, completes our answer to the
9 prosecution's contention that HATA participated in
10 Japan's over-all aggression in three ways. One, as
11 commander of the Japanese armies in China; two, that
12 as Minister of War in the ABE and YONAI Cabinets he
13 "helped determine the national policy and worked on
14 plans and preparations for war during that period;"
15 and, three, that "he was one of the prime movers in
16 the overthrow of the YONAI Cabinet," and under this
17 third point the concomitant allegations that he was
18 a supporter of the Tripartite Pact, and that he
19 "secretly" recommended TOJO to the Emperor.

20 We move now to the last allegations which
21 the prosecution in its answer to our motion for dis-
22 missal makes against the accused HATA.

23 They are Count 45, Nanking, and Counts 47
24 to 50, the attacks against the Chinese cities Changsha,
25 Hongyang, Kweilin, and Liuchow, and Counts 44, and

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24 to 50, the attacks against the Chinese cities Changsha,
25 Hongyang, Kweilin, and Liuchow, and Counts 44, and

1 53 to 55. HATA is also named in Count 46, the attack
2 on Canton. In our motion for dismissal we had claimed
3 that at the time, October 1938, HATA was only
4 Commanding General of the Japanese Army in Central
5 China and that the attack on Canton was made by the
6 South China Japanese Army under another commander and
7 that HATA was in no wise connected with this oper-
8 ation. Mr. Comyns Carr, in his answer to our motion
9 for dismissal, very properly recognized the truth of
10 our statement and accepted it. He stated (p. 16832):

11 "The attack on Canton, Count 46, was made
12 by the South China force and he can only be held
13 responsible for that on the basis that it was an
14 act of the conspiracy of which we contend he was a
15 member."

16 We, therefore, leave it at that and will not
17 go again into the evidence as to HATA's non-connec-
18 tion with that operation. We, of course, do not
19 accept Mr. Carr's statement that General HATA was a
20 member of the alleged conspiracy.

21 Count 53, we respectfully submit to the
22 Tribunal, is not even worthy of comment in this sum-
23 mation, because it is even more obvious with reference
24 to this court than it is with the general counts on
25 conspiracy that the prosecution has utterly failed

1 to prove conspiracy "to order, authorize, and permit
2 the commanders-in-chief of the several Japanese
3 naval and military forces" to commit the offenses
4 alleged in this count. The prosecution hasn't even
5 attempted to prove a conspiracy of this type. The
6 only thing this Tribunal has heard with reference to
7 this alleged conspiracy was when this particular
8 count in the Indictment was read into the record on
9 May 7, 1946. We therefore ignore it and will devote
10 ourselves to the counts in which some evidence was
11 introduced.

12 We respectfully direct the Tribunal's atten-
13 tion at this time to the fact that the accused HATA
14 is not named in Counts 37 and 38 the counts alleging
15 the conspiracy to murder by the initiation of war.
16 These conspiracies are alleged to have commenced on
17 both counts on June 1, 1940. On this date, HATA was
18 War Minister in the YONAI Cabinet and it is highly
19 significant that, although on Point Two in its
20 answer to our motion for dismissal the prosecution
21 alleges that HATA "worked on plans and preparations
22 for aggressive war" while he was War Minister, he is
23 not named as one of the conspirators in Counts 37
24 and 38, the conspiracy to murder counts. On this
25 point we shall have more to say later.

1 Count 44, like Count 53, is a count alleg-
2 ing conspiracy to murder prisoners of war and others.
3 We respectfully submit the same contention as to
4 this count as we did to Count 53, namely that the
5 prosecution not only failed totally and completely
6 to prove this alleged conspiracy, but they did not
7 even attempt to offer any evidence with reference
8 to it. We, therefore, shall ignore this count.

9 Mr. Carr, in his answer to our motion for
10 dismissal, apparently agreeing with us that the
11 wrong HATA is named in the Russian counts, skips
12 Counts 51 and 52 and we shall likewise not take up
13 the time of this Tribunal pointing out the lack of
14 evidence against HATA with respect to these two
15 murder counts.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1445, a recess was
19 taken until 1500, after which the proceed-
20 ings were resumed as follows:)
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1 PARSONS OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: With respect to Count 45, the
5 Nanking Count, Mr. Carr states (16831): "He is
6 charged in Count 45 with responsibility for the
7 attack upon and rape of Nanking when he held his im-
8 portant post at the War Ministry." At the time
9 referred to, HATA was Inspector-General of Military
10 Education and Supreme War Councillor. He had held
11 those posts only since 26 August 1937, less than four
12 months. As Inspector-General, of course, he had nothing
13 to do with tactics or strategy and hadn't trained the
14 troops involved in that short time. As for the Supreme
15 War Council, Mr. Herwitz of the prosecution told this
16 Tribunal when he was explaining the various positions
17 in Japan (p. 672): "Its function is to advise on all
18 military and naval policy generally and to coordinate
19 all administrative and tactical organizations. It
20 plays no part with respect to tactics and strategy."
21 And the prosecution has not produced one single meeting
22 held, one single bit of advice given by the council
23 or by HATA while HATA held this position. Therefore,
24 we respectfully submit, HATA cannot be held responsible
25 for the attack on Nanking under any conditions and we

will not go any further into the merits of this count,

1 as to HATA. We rely fully on the sound judgment of
2 the Tribunal in finding HATA was in no wise responsible
3 for Nanking.

4 We will devote our summation then to Counts
5 47 - 50, 54 and 55.

6 With reference to Count 47, the attack on
7 Hankow, the prosecution offered only one witness, an
8 American businessman named Derrance (3390). He stated
9 that from the vantage point of an American ship in the
10 river he saw Japanese soldiers kicking Chinese into
11 the river and shooting them. This man is the only
12 witness, we repeat, produced by the prosecution on this
13 count. It is most peculiar that no Chinese citizen
14 of Hankow could be found to be brought before this
15 Tribunal to testify to support or corroborate the
16 statements of Derrance. Surely in so large a city
17 someone must have seen these acts, that is, someone
18 must have seen them if they did take place. The
19 prosecution spared no expense in bringing witnesses
20 from far off places to testify about atrocities in
21 other sections of the Pacific. It is most peculiar,
22 in fact, it is extraordinary, that the prosecution
23 could not find one Chinese who would come forward to
24 testify on his own about these alleged atrocities, or
25

1 at least to corroborate and substantiate the state-
2 ments of Dorrance.

3 And Dorrance, if the Tribunal please, was the
4 manager of the American Standard Oil Company in
5 Hankow -- obviously, the war disrupted his business and
6 he could have nothing but ill to say of those whose
7 occupation of Hankow had ended his business. And
8 more extraordinary still is the fact that the prosecu-
9 tion could not even produce one affidavit, or one
10 statement from any source, or one newspaper article
11 about atrocities in Hankow, while the record is replete
12 with hundreds of articles, statements and affidavits
13 used by the prosecution to support its contention that
14 atrocities had taken place in Nanking, Manila, and
15 throughout the vast reaches of the Pacific.

16 The only testimony, then, is that of a man
17 who is naturally biased in favor of the country in
18 which he is making his living, and against the country
19 whose actions interfered with the smooth running of
20 his business operations.

21
22 Now let us examine what the defense witnesses
23 had to say about Hankow, KIMURA, a company commander
24 who "led the vanguard entering the city" (21583),
25 described the preparations so that there would be
perfect order in the city when it was captured (21584)

1 and states (21585) "On the occasion of the capture of
2 Hankow there were orders from division headquarters
3 that all troops maintain strict military discipline
4 and to punish severely anyone taking an independent
5 action. The occupation in Hankow was carried out in
6 a truly exemplary manner. . ." There was no cross-
7 examination of this witness.

8 Next witness YOSHIKAWA was during the Hankow
9 campaign "in charge of the rear staff members of the
10 Sixth Division" (21587). He states (21588): "Since
11 a strict order on military discipline was previously
12 issued by HATA, the Commander, it was printed on leaf-
13 lets and distributed among the troops. This was
14 written on the troops' attitude toward the Chinese
15 residents, as well as on what precautions the troops
16 should take within the city. It warned the troops to
17 strictly observe military discipline and to prevent
18 any disorders in the city. Thus we were to enter
19 Hankow with every precaution." And (21589): "The
20 above being the situation, it is inconceivable that
21 the Japanese Army could have committed assaults, loot-
22 ing, rapes, and other brutal acts. I have never seen
23 such acts, never heard of such rumors, and never re-
24 ceived any reports of such atrocities."
25

And, again, the prosecution did not "wish to

cross-examine."

1 Next witness, YOSHIBASHI, a captain on the
2 staff of the Second Army at Hankow (21592). He states
3 (21595): "And I made sure our troops entered Hankow
4 peacefully without carrying out any hostile actions
5 and that no trouble such as loot, violence, or blood-
6 shed occurred on the part of our soldiers. When I
7 came to Hankow, the city was, needless to say, in a
8 peaceful state and not a single shot was heard.
9

10 "when our entry took place, only a minor
11 unit short of a regiment, which was selected from
12 among the Sixth Division was admitted into the city
13 area for purposes of defense, by order of the army
14 commander and the rest were all prohibited from enter-
15 ing within ten kilometers of Hankow."

16 He continues (21594): "Our army commander
17 had issued very strict orders concerning military
18 discipline." Also, "Entering Hankow on the afternoon
19 of the 29th, I walked about every quarter, but I never
20 sighted any corpses."
21

22 Next showing how careful HATA was to keep
23 only small forces in the city, and thus avoid any
24 unnecessary friction, he states (21595): "When the
25 guarding unit of the 13th Division were ordered on
November 3 to be quartered in dirty buildings in the

1 outskirts of Hankow, because our troops were banned,
2 from entering the city, an adjutant of the corps came
3 along and stormed at me in excitement: 'Such treat-
4 ment is an insult to the army.' However, I could not
5 allow them to enter the city on account of the order."

6 And he concludes with (21596): "At any rate,
7 the most close precaution and strict supervisions
8 were exercised, to prevent our soldiers from committing
9 any outrageous acts. Therefore, I affirm here that
10 such scandals as murder and rape of the Chinese people
11 never occurred in Hankow."

12 and, again, if the Tribunal please, the
13 prosecution did "not wish to cross-examine."

14 Derrance had stated that the river, while he
15 was aboard the gunboat, didn't have many other ships.
16 However, YOSHIBASHI tells us (21594): ". . . but all
17 of them were prohibited from landing and the river
18 was crowded with our ships filled with soldiers."

19 "We wonder how good the powers of observation, and how
20 credible the testimony of Derrance, with respect to
21 any of these matters, can be.

22
23 We next present the witness OKKI, a war
24 correspondent at Hankow (21601). He states (21603)
25 while traveling in the city: "No dead were seen along
the way" and (21604): "However, on October 26, the

1 river swarmed with vessels," and (21605): "I swear
2 that the rumor that Japanese soldiers slaughtered
3 Chinese war prisoners and threw them into the river
4 is entirely groundless. Actually, it was so calm on
5 October 26 and 27 that not even the report of a gun
6 was heard."

7 And again the prosecution did not desire to
8 cross-examine this witness. There had been no battle
9 for the city of Hankow. Skirmishes had taken part in
10 the cities before Hankow, and the Chinese forces had
11 withdrawn, and the entry into Hankow was a peaceful
12 march into the city.

13 The next witness was OGAMI, a war correspondent
14 and he reached Hankow 26 October (21608). He states:
15 "At that time, the Henshui River, a tributary of the
16 Yangtze, was so crowded with vessels of all sizes,
17 that it was impossible for us to come directly along-
18 side the bank. We, consequently, had to walk across
19 a number of ships to go ashore." And (21609): "On
20 October 28, I again went from Wuchang to Hankow. At
21 that time a great number of vessels were already at
22 anchor in the river, so that upon landing, I could
23 not go directly ashore, but had to walk across 30 or
24 40 vessels in order to reach the pier."
25

Later, on the same page, ". . . the streets

1 were quite as tranquil as in peacetime." And again,
2 if the Tribunal please, the prosecution did not desire
3 to cross-examine.

4 The next witness was IKDEA, a colonel at
5 Hankow. He states (21612): "First I landed at Anking
6 and assumed the responsibility of supplying the Second
7 Army, then by the order of General HATA, Commander of
8 the Japanese army in Central China, I left Anking for
9 Chinkiang, where I made liaison with headquarters of
10 the above army and received detailed instructions
11 regarding the actual measures to be taken to protect
12 foreign rights and persons and property of the Chinese
13 at Hankow during the coming attack on that city."

14 After relating the efforts made to prevent
15 the occurrence of incidents, he states (21613):
16 "Accordingly, we became very popular with the people.
17 The Mayor of Hankow, the President of the Peace Asso-
18 ciation, and other persons representing the people
19 came to me to express their gratitude."
20

21 And (21614): "Anyhow I heard not a single
22 gun shot throughout my trip to Hankow." "Only a small
23 number of garrison troops were stationed in the city."

24 "When I had the chance to see General HATA,
25 the Commander in Chief of the Central China Expedi-
tionary Forces, he told me earnestly to be cautious and

1 discreet in action so as to prevent any possible
2 complication in matters concerning protection of the
3 people and foreign affairs." And, again, the prosecu-
4 tion did not desire to cross-examine the witness.

5 The next witness was HIYAZAKI, staff officer
6 of the 11th Army. Speaking of HATA's actions with
7 reference to the Wuhan area, including Hankow, he
8 states (21619): "Commander HATA had given deep
9 consideration regarding the actions of military per-
10 sonnel required for the capture of Wuhan and particu-
11 larly with reference to the residents in general
12 buildings, installations, etc., outside the category
13 of military objectives and ordered that they were not
14 damaged or destroyed. One example of this is at the
15 beginning of October of the same year, Commander HATA
16 issued orders to his subordinate commanding officers
17 prescribed summary 'Restricted Acts' in the capture of
18 Wuhan, together with a map minutely indicating rights
19 and interests of foreign nationals as well as impor-
20 tant Chinese political and military installations. He
21 took scrupulous steps to prevent violation of Inter-
22 national Law and to prevent occupation or destruction
23 of installations other than military." And, again,
24 the prosecution did not desire to cross-examine.
25

Next, we have the witness MORIOKA, who was

1 attached to headquarters of the Central China Expe-
2 ditionary Army, and who arrived at Hankow on the 28th
3 of October (21625): "Not a Japanese soldier was to
4 be seen except those of the headquarters unit of the
5 Japanese military police stationed in the Ssurung Bank,
6 because the Japanese soldiers were not permitted to
7 enter the city; but were quartered on the outskirts
8 of the city." He was billeted aboard a Japanese ship
9 docked at Hankow. He says (21626): "Never once did
10 I hear the report of a gun. Nor did I see a murder
11 committed within the vicinity of the wharf. The
12 customs house nearby the wharf was used as the office
13 of the transport headquarters, from the window of
14 which we had an unobstructed view of the vicinity."
15 And, again, as with all our witnesses who had come
16 on before, the prosecution did not desire to cross-
17 examine.

18
19 Our next witness was IMAGI, staff officer of
20 the Sixth Division and "among those who first entered
21 the city limits of Hankow" (21642). He states (21644):
22 "Furthermore, at the time of entry, no battle took
23 place and not a shot was fired. The troops were
24 composed and orderly; no air to kill prevailed and
25 the entry was accomplished very tranquilly. As
Commander KATA strictly maintained military discipline

1 and morals, we strictly observed his orders even before
2 at the entrance of the cities such foreigners as Ger-
3 mans, French, and Italians came to meet us. In order
4 to avoid trouble, we did not go through the British
5 concession and entered the city by another way under
6 the guidance of a French missionary. Accordingly,
7 there was no trouble whatsoever and we even took up
8 our lodgings in accordance with these people's in-
9 structions." (21645): "As I mentioned above, the
10 Japanese forces tranquilly entered the fortress in
11 good order and it is not possible that such cruelties
12 as plunder, rape, killing and wounding could have been
13 done after this entry. Accordingly, I did not ever
14 see even one corpse or the like inside the city."
15 "In the occupation of Hankow the navy took charge of
16 occupying the riverside area, the Japanese, French,
17 and British concession area, and the army took over
18 the airfield and the western area of Hankow."
19

20 So that, even if Derrance is to be believed
21 in his statements that atrocities took place at the
22 wharf, these atrocities were committed by naval forces,
23 not by army forces under MATA.

24 AKAGI next states (21645): "At this time
25 more than 1500 or 1600 Chinese ships having a full
load of Chinese were sailing all over the Yangtze-kiang

with identification marks of neutral and foreign countries."

1
2 KAWABE, Chief of Staff to IATA during the
3 Hankow operation stated (21701): "As we gave such
4 strict order and instructions and took every pre-
5 caution with minute care we believe there was not a
6 single case of violation of military discipline in
7 Hankow, such as massacre, violence, plunder, etc.,
8 nor did we receive any report or hear of them. I
9 read in the papers that someone testified to the
10 measure in Hankow, and I am astounded at such incon-
11 ceivable testimony."

12
13 After fruitless cross-questioning, the record
14 shows the following:

15 "Mr. Suttan: These questions are based
16 upon the testimony of Derrance which appears at
17 pages 3392 - 3396 of the transcript of proceedings.

18 "The President: We were told that this
19 morning and we were also told that was the only
20 testimony."

21 and with that we cease adducing further
22 evidence on Hankow. This, then, is the defense
23 evidence on the alleged atrocities of Hankow and every
24 bit of it went unchallenged by the prosecution. The
25 testimony gives the lie direct to the statement of

1 Dorrance that the Yangtze was not filled with ships
2 of all types. The evidence is unequivocal on the part
3 of war correspondents and officers who took part in
4 the campaign that there were no atrocities of any
5 nature whatsoever in Hankow. There had been no battle
6 for the city, there had been just a peaceful occupation.
7 Only a small unit, less than a regiment, had been al-
8 lowed to enter the city. The evidence shows that
9 NATA had taken every possible precaution to forestall
10 any untoward incidents or occurrences. We cannot help
11 but again stress to the Tribunal the extraordinary
12 fact that from one of the largest and most cosmopolitan
13 cities in China, the prosecution could not produce even
14 one witness, or the affidavit of a witness or any other
15 document to support the testimony of Dorrance with
16 reference to Hankow. The conclusion is inescapable, in
17 view of the fact that the prosecution so heavily
18 documented its Manila and Nanking phases, that, had
19 any atrocities really taken place, they would have been
20 able to get evidence from somewhere to support the
21 count on Hankow.
22

23 And, finally, and very important, we respect-
24 fully submit, is the fact that even in rebuttal, when
25 the prosecution tried desperately to plug the many
holes in its case, it could not, and did not, offer

1 any additional evidence on Hankow either to support
2 the testimony of Derrance or to rebut our evidence
3 on Hankow.

4 We next turn our attention to counts 48, 49,
5 and 50, the cities of Changsha, Hongyang, Kweilin, and
6 Liuchow. Our first witness was MASUDA, a staff
7 officer of the 11th Army, who took part in the capture
8 of Kweilin. He states that Changsha and Hongyang had
9 been bombed and destroyed by American and Chinese
10 planes, and for that reason many Chinese civilians
11 were killed, and the Japanese Army did not even enter
12 Kweilin. He states (21633): "Since Commander-in-Chief
13 HATA had issued very strict orders concerning military
14 discipline and public morality beforehand, bringing
15 our attention even to the minutest details, we gave
16 our best efforts not to violate the commander's orders
17 and instructions. Accordingly, in the Siangtau and
18 Kweilin operations, our army absolutely did not commit
19 any misdeeds such as pillage, rape, and massacre of
20 the Chinese inhabitants."

21 This witness was not cross-examined.

22 We direct the Tribunal's attention to orders
23 for the establishment of "strict military discipline"
24 issued by HATA and distributed by his direction for
25 all units under his command (21736-8), 8 December 1942,

and again on July 6, 1944, stern injunctions not to
1 "loot, rape, or violate."

2 The next offered the affidavit of ARUGA, a
3 lance-corporal who took part in the Kweilin-Liuchow
4 operations. He states (21803):

5 "Before the opening of the Honan and
6 Kweilin-Liuchow operations, we soldiers who were
7 going to be engaged in them, were repeatedly and
8 strictly instructed by our seniors about the upkeep
9 of our discipline and morale toward the general
10 Chinese people. These instructions emphasized the
11 four items, 'Do not burn, kill, plunder, or violate.'
12 These warnings were faithfully followed by every one
13 of us soldiers.
14

15 "The soldiers of our unit warned one another
16 and strictly observed these four points. I never saw
17 our soldiers commit any criminal acts toward the
18 Chinese populace during the operations."

19 By agreement with the prosecution, this
20 witness was not brought in for cross-examination.

21 Our next witness was Lieutenant-General
22 YOKOYAMA who was Commander of the 11th Army Corps.
23 The duty of this corps was to "attack and occupy
24 Changsha, Fongyang, Kweilin, and Liuchow (21796).
25 Three Divisions of this corps (21797), under YOKOYAMA,

1 attacked Changsha. He states: "When the city was
2 later occupied, the Japanese troops conducted them-
3 selves so well, that "some 6000 people who had taken
4 refuge, returned before long." They even supplied
5 food to the people (21798). The General next
6 describes how his corps took Liangyang (21798). Again
7 he used three divisions and, as before, he followed
8 HATA's order on strict discipline. Next the General
9 takes up the Kweilin operation. This time he employed
10 four divisions (21799). And finally he says: "I
11 ordered two divisions to attack Liuchow simultaneously
12 with the attack on Kweilin. The city was occupied
13 easily on the 10th of November."

14 "In this operation, the 23rd Army Corps
15 under the command of Lieutenant General TANAKA in
16 Kwantung cooperated with us." In speaking of all these
17 operations, he says (21800): "I strictly ordered my
18 officers and men to observe the fundamental rules of
19 'Do not commit crimes,' 'Do not commit plunder,'
20 'Do not burn houses,' and 'Do not kill.'" Later on
21 he states: "Upon receipt of instructions upon several
22 occasions from Supreme Commander HATA concerning
23 principle of 'love the people,' I did everything in
24 my power to see to it that the said principle be
25 observed faithfully. For this purpose I issued

1 instructions several times to my officers and men in
2 writing, or personally gave them to division commanders
3 and chiefs of staff under my command at their meetings."
4 The prosecution did not desire to cross-examine this
5 witness.

6 We need go no further with reference to these
7 four cities, which were captured by the forces of
8 Lieutenant-General YOKOYAMA between June and November,
9 1944, to show that everything that could be done by
10 HATA to avoid atrocities was done by him. The evidence
11 of YOKOYAMA makes it pellucid that HATA was not present
12 at these operations nor did he direct them. As
13 Commanding General of all Japanese Forces in China,
14 he remained in his headquarters in central China and
15 gave strict orders about the enforcement of discipline.
16 There is no evidence that reports of any atrocities
17 ever reached him and the prosecution didn't even try
18 to cross-examine our witnesses on this point. Nowhere
19 in all the prosecution evidence of alleged atrocities
20 in the taking of these four cities between June and
21 November 1944 is there any allegation by the prosecu-
22 tion that the alleged atrocities were so extensive
23 that they could not have failed but to reach HATA.
24 The prosecution did make such allegations as to the
25 army commanders and the government officials in Tokyo

1 with reference to Nanking. Nowhere is there an
2 allegation that they were so prolonged that HATA must
3 have heard of, or known of them. Nowhere, we respect-
4 fully submit, is there any knowledge of these atroc-
5 ities imputed to HATA, and absolutely at no time has
6 the prosecution introduced any evidence to show that
7 HATA failed to take precautions to avoid atrocities.
8 We have shown that he did take precautions and did
9 give orders to avoid atrocities. In all wars there
10 are, inevitably, undesirable incidents by the troops.
11 There may have been some here, but how can the Command-
12 ing General, with forces scattered over hundreds of
13 thousands of square miles, be held personally responsi-
14 ble for the conduct of these troops, if it is not shown
15 that he ordered them, authorized them or permitted
16 them to commit atrocities? Not once, during the two
17 years of this trial, has the prosecution shown that
18 reports were made to HATA of those atrocities, or even
19 that he had heard of them. Not once has it been shown
20 that HATA failed or refused to take proper precaution.
21 In Yokohama today, as well as in China, and elsewhere
22 by the victorious allied powers, trials are being held
23 for those who were in direct command of the troops in
24 the field and who knew about the atrocities perpetrated
25 by their men, or they authorized, permitted, and in

1 many cases even ordered the perpetration of such
2 atrocities. We have no such case here.

3 All the above evidence quoted shows HATA
4 took every possible precaution. We repeat again, at
5 no time is there one shred of evidence offered by the
6 prosecution that HATA knew about these atrocities,
7 that they ever came to his attention, either by
8 official report or by rumor. Nowhere is there a
9 scrap of evidence that they were so intensive or
10 prolonged that they must have come to his attention and
11 that he therefore must have known of them somehow.

12 HATA was relieved in November of 1944 when the
13 last of these attacks, namely, Kweilin and Liuchow, were
14 alleged to have taken place. The earliest, Changsha,
15 took place 18 June 1944. HATA had assumed command
16 1 March 1941. Therefore, but for two months, he was
17 in command that entire year. During all of 1941, there
18 is no count alleging atrocities. During all 1942,
19 there is no count alleging atrocities. During all
20 1945 there is no count alleging atrocities, and, during
21 1944 it is only in the second half of the year that
22 we find counts alleging atrocities. Here, then, in
23 one of the most bitter wars in history, where there
24 were Nanking and Manila and the various atrocities
25 alleged by the prosecution throughout the length and

1 breadth of the Pacific as well as in the prisoner
2 of war camps throughout Japan, we find that for
3 almost three and a half consecutive years of HATA's
4 rule as Commander in China, no counts are offered
5 alleging atrocities.
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1 We respectfully submit that this, above all,
2 speaks most elequently as to HATA's role as a commanding
3 general. If it had been true that he authorized,
4 ordered, and permitted his troops to commit atrocities,
5 then surely with millions of Japanese troops at his
6 command scattered throughout China, there would have
7 been one count for at least every single year of his
8 command if not for every single month. This complete
9 absence of counts for three and a half years shows
10 that HATA was, as we contend, a strict disciplinarian
11 and kept his troops under control at all times, and
12 did not ever order, authorize, or permit them to
13 commit atrocities.

14 If HATA is to be held responsible, even
15 granting for the sake of argument, that Hankow, Changsha,
16 Hongyang, Kewilin and Linchow took place, then no
17 single commander in any army belonging to any country,
18 including my own, can ever avoid being held similarly
19 responsible for even in the most advanced countries
20 represented here by the allies, incidents which are
21 here called atrocities, take place. Even in this
22 allied occupation of Japan which is conceded to be
23 the most successful occupation in all history, if one
24 were to pick up our own English-language newspapers
25 and piece together the reports of incidents by troops,

1 he could make out a count against General MacArthur
2 and we, who are part of this occupation know that such
3 a count would be extremely ridiculous for while General
4 MacArthur is in command of the entire occupation, he
5 is not in command of the troops themselves. Other
6 generals command the troops and have the responsibility
7 and duty for the maintenance of discipline.

8 General HATA, in command of the entire China
9 theatre, was not in actual command of troops. Other
10 generals, as for instance YOKEYAMA, were in command
11 of the troops and theirs was the responsibility for
12 discipline. With respect to army chain of command and
13 the responsibilities of each level in that chain of
14 command, we offered a series of documents promulgated
15 by Japanese army headquarters in 1940 to help the
16 Tribunal, as we thought, understand what were the
17 respective responsibilities in the Japanese Army of
18 General HATA as supreme commander in China and his
19 subordinates who were in actual command of troops
20 in the field. Mr. Freeman, in introducing these
21 documents, stated "the defense contends that this
22 line of command is of the essence to place responsibility
23 if such acts were committed". And the President, in
24 rejecting these documents on behalf of the Tribunal,
25 stated "But we know that there are chains of command

1 end responsibility". We therefore rest with the
2 Tribunal's knowledge of the chains of command and
3 of the levels of responsibility and are certain it
4 will agree with us that HATA was not responsible. (p.21813)

5 During the general phase of the defense
6 case, the case of the Doolittle Fliers came up for the
7 first time. General SAWADA, Commander of the Thirteenth
8 Army in Shanghai, which captured, tried, and executed
9 the Doolittle fliers, was cross-examined by Mr.
10 Tavenner (page 27,450). This cross-examination on
11 this subject took the defense completely by surprise,
12 as there had been no hint during the prosecution's
13 case in chief that HATA was in any wise connected
14 with the trial and execution of the Doolittle fliers.
15 Before proceeding with the defense evidence with
16 reference to this matter, we will review pertinent
17 portions from Mr. Tavenner's cross-examination of
18 General SAWADA (page 27,451):

19
20 "Q Did you discuss the matter of the trial
21 of the Doolittle fliers with the accused HATA?

22 "A As I was absent from my post, prior and
23 at the time of the trial, I had no discussion whatsoever
24 with the commander in chief."

25 (page 27,452):

 "Q As a matter of fact, did you not ask

1 General HATA before the trials, -- didn't you say to
2 him that you were waiting for the receipt of the orders
3 to try the Doolittle fliers?

4 "A No such thing happened prior to the trial.

5 "Q Did not General HATA say to you that
6 he was also waiting for orders from Tokyo to try the
7 Doolittle fliers?"

8 And there, if the Tribunal please, we have
9 in the prosecution's own question on cross-examination
10 an acknowledgment by the prosecution that the trial
11 and execution were ordered and handled by Tokyo, and
12 that HATA's general headquarters in Nanking were the
13 normal regular Japanese army channels through which
14 orders from Tokyo GHQ to various Japanese army units
15 in China were forwarded. General HATA was Commanding
16 General of all Japanese armies in China with his GHQ
17 in Nanking. It needs no elaboration here, for the
18 members of an International Military Tribunal must
19 know it, that all orders emanating from the highest
20 command in an army and directed to a subordinate unit
21 must pass through the chain of command until they
22 reach the headquarters of the appropriate lower echelon
23 unit. In this case, we have Imperial General Headquarters
24 in Tokyo, the highest authority in the Japanese Army,
25 commanded by General SUGIYAMA.

1 In the China theatre we have General HATA
2 as Commanding General of that theatre of operations,
3 with his headquarters in Nanking. In the vast country
4 of China there were various Japanese Armies, each
5 with its own headquarters, and, under these armies
6 there were corps and their subordinate units. If
7 any of the armies or subordinate units wished to
8 communicate with Tokyo, they would have to route their
9 messages through GHQ in Nanking to Tokyo. Similarly,
10 if the Supreme Command in Tokyo wished to communicate
11 with any unit in China, it sent its message for that
12 unit to GHQ in Nanking which then forwarded the message
13 to the appropriate unit.

14 With this as a background, we will proceed
15 to analyze the evidence offered by both sides and we
16 respectfully submit that the Tribunal will see that
17 at no time was General HATA the originating or initiating
18 authority in this matter but his only connection with
19 the matter was that his GHQ in Nanking was in the direct-
20 chain of command through which all messages between
21 Tokyo and Shanghai Headquarters of the Thirteenth Army
22 had to pass.

24 We will begin then with General SAWADA's
25 answer to Mr. Tavenner's above quoted questions:

"A. No, that he was waiting for the results

1 of the review of the Shanghai trial that was to take
2 place in Tokyo."

3 SAWADA testified that the orders to the
4 Thirteenth Army to hold the Doolittle Trial had come
5 from HATA, the Commander in Chief of the Japanese
6 Armies in China. Mr. Tavenner then asked (page 27,454):

7 "Q Now I would like you to fix a little
8 more definitely the time of your conference with the
9 accused HATA and what it related to.

10 "A I think it was around the 20th of September,
11 when I returned from the front-line after commanding
12 operations. I went to General Headquarters to make
13 a report. And at that time, among other things, I
14 made a report on the trial of the Doolittle Fliers.
15 At that time I told the Commander in Chief, General
16 HATA, that the sentence seemed to have been very heavy.
17 But, inasmuch as the results of the trial had been
18 reported to Tokyo, there was nothing else that we could
19 do, except to wait the results of the review which
20 was being conducted in Tokyo. On that same occasion
21 General HATA also said that inasmuch as the case was
22 being reviewed in Tokyo, there was nothing that could
23 be done except to wait."
24

25 Here, then, on the prosecution's own cross-
examination, we have evidence that Tokyo was reviewing

1 the case, and that HATA had said "there was nothing
2 that could be done except to wait". This is not evidence
3 offered by the defense, and therefore open to prosecution
4 comment that it is untrue or manufactured or thought
5 up now for purposes of trial by counsel, but the
6 prosecution's own evidence showing definitely that
7 HATA had no authority to act on his own and that
8 the decision was being made in Tokyo.

9 Cross-examination of this witness then was
10 continued by counsel for HATA and this testimony was
11 elicited (p. 27,457):

12 "A I received my orders directly from the
13 Commander in Chief, but I have heard that the Commander
14 in Chief received his orders direct from Tokyo.

15 "Q Where did you hear that?

16 "A From General HATA.

17 "Q Have you ever since that time learned
18 that General HATA did receive orders from Tokyo to
19 hold this trial?

20 "A Yes.

21 "Q From where?

22 "A From General HATA.

23 "Q Did you hear it from any other source
24 at any time?

25 "A Yes, I heard that from General TOJO after

1 I entered Omori Camp. That was much later.

2 "Q Do you know when that was? Can you
3 p? ce that?

4 "A That was in October, the year before
5 last -- November."

6 The Tribunal then asked the following questions
7 and received the following answers (p. 27,458):

8 "Q Were the judges in the case of the
9 Doolittle fliers obliged to sentence or at liberty
10 to acquit?

11 "A The judges were at liberty to conduct
12 the trial on the basis of the law.

13 "Q What was the law?

14 "A Military laws promulgated by the China
15 Expeditionary Forces.

16 "Q Did that permit of an acquittal?

17 "A No."

18
19 We respectfully submit that General SAWADA
20 is not the proper person to interpret laws and, even
21 if he had answered "yes" to the Tribunal's question,
22 that would still not be binding on the Tribunal, and
23 it would still be up to the Tribunal to determine
24 whether or not the laws permit of an acquittal. The
25 law referred to was prosecution exhibit 1991 (p. 14,662)
dated August 13, 1942, issued by the Expeditionary

1 Forces in China. It was promulgated after receipt
2 by HATA from the Vice-Minister of War in Tokyo of an
3 order directed to each "chief of staff stationed in
4 Japan and outside Japan" on the "treatment of enemy
5 air crew members" and dated 28 July 1942 (pros. ex.
6 1192) stating the decision of Tokyo to try by court-
7 martial "enemy air crew members who entered our
8 jurisdiction with the object of raiding Japanese
9 territory".

10 That HATA's headquarters promulgated its
11 law after receipt of these orders from Tokyo is borne
12 out by the next question and answer by SAWADA (p. 27,459):

13 "Q When the Chin- Expeditionary Forces
14 promulgated these laws, do you know whether or not
15 orders had been received from Tokyo for the promulgation
16 of these laws?

17 "A Although I heard of this later, the draft
18 came from Tokyo."

19 Continuing, we learn that orders to the
20 Thirteenth Army from Tokyo would have to go through
21 HATA and be forwarded by his headquarters (p. 27,465):

22 "Q General SAWADA, if orders had come from
23 Tokyo, ordering the trial of the Doolittle fliers,
24 before they could reach your headquarters they would
25 have to go through the headquarters of General HATA.

1 as Commander in Chief of the armies in China. Isn't
2 that correct?

3 "A Yes."

4 And showing that the Shanghai court's decision
5 would have to go through HATA's headquarters on its
6 way to Tokyo:

7 "Q And when a decision was announced by
8 the court, that decision had to be forwarded to Tokyo
9 again through General HATA's office because he was
10 Commander in Chief of the forces in China. Isn't that
11 correct?

12 "A That is so, yes.

13 "Q And in Tokyo, after they saw the decision
14 and they decided to change it from eight deaths to
15 three deaths and five life sentences, again, in order
16 to reach your command, that order making that change
17 had to go through General HATA because he was Commander
18 in Chief of the Armies in China, isn't that correct?

19 "A Yes, that is so."

20 That the orders for the trial came from Tokyo
21 is conclusively established by an excerpt from General
22 TOJO's interrogation (Pros. ex. 1984-A, p. 14,604):

23 "Q Then the order of occurrences was as
24 follows: the raid, the capture of the fliers, the
25 order which you issued, the trial and the executions.

1 "A. Yes.

2 "Q And the order which you issued provided
3 for the trial and punishment.

4 "A Yes."

5 On re-cross, Mr. Tavenner asked if General
6 H. TA had the power to make recommendations reducing
7 "the death sentence to life imprisonment or other
8 type of sentence". (p. 27,467). SAWADA stated, "I
9 do not know about the authority of the Commander in
10 Chief " and Mr. Tavenner then asked (p. 27,468):

11 "Q And he made no request that you make a
12 recommendation; that is, the accused H. TA did not?

13 "A No."

14 HATA couldn't possibly ask SAWADA to make
15 a recommendation because, the first time SAWADA and
16 HATA met to discuss the trial, "already one month had
17 elapsed at the time I had returned from the front"
18 (p. 27,451) and "when I met General HATA the trial had
19 already been over" (p. 27,452). And as to why neither
20 HATA nor SAWADA had made recommendations about the
21 decision of the court, this question and answer follow
22 (p. 27,470):

23 "Q Is it the usual custom in the Japanese
24 Army for you or General HATA to make recommendations
25 in such cases to your superiors?"

1 "A It was not a custom."

2 Now let us examine the defense testimony
3 with respect to the Doolittle trial. The testimony
4 of General MIYANO, a member of General HATA's staff
5 in China, testified that the fliers were captured
6 by the Eleventh and Thirteenth Armies in China "and
7 when this was reported the order was given by the
8 Chief of the General Staff in Tokyo to send those
9 fliers to Tokyo immediately" (p. 28,869). When they
10 were sent back from Tokyo, they were sent directly
11 to Shanghai. Orders were sent with the fliers as
12 follows (p. 28,870):

13 "A The order was in two parts. One part
14 stated that a new military law for the treatment of
15 fliers who raided Japanese areas had been created and
16 ordered us to post the new law in accordance with a
17 copy that was attached to the order. The second part
18 ordered that the fliers be tried by military court
19 in accordance with the new military law which was
20 contained in the first part of the order.

21 "Q When was the order notifying you of the
22 creation of the new military law received?

23 "A 28 July 1942."

24 MIYANO continues and states that HATA was
25 opposed to treating the fliers as war criminals, but,

instead, wished to treat them as prisoners of war.

1 Next MIYANO states (p. 28,872):
2

3 "A Since the China Expeditionary Force
4 Headquarters did not have any military court in its
5 organization, since Tokyo had sent the fliers directly
6 to Shanghai, it was decided that the trial, if it had
7 to be held, would be held by the 13th Army whose
8 headquarters were in Shanghai. Because General HATA
9 opposed the idea of trying the American fliers by a
10 military court, instead of ordering the 13th Army to
11 proceed with the trial, he ordered the 13th Army to
12 investigate whether or not the fliers would be tried
13 by military law or could be treated as prisoners of
14 war.

15 "Q Did General HATA ever himself, or your
16 headquarters, receive any answer from the 13th Army
17 saying that the evidence was not sufficient to hold
18 the trial?
19

20 "A No."
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1 That the case was then taken out of HATA's
2 hands, that he no longer from this point on had any
3 authority in the matter, that the trial was handled
4 directly between 13th Army Headquarters in Shanghai and
5 Tokyo, and that HATA did not have the authority to inter-
6 cede to change the course of events, or even to make
7 clemency recommendations, is best told not by us, but
8 by the evidence introduced before the Tribunal by MIYANO
9 and TANAKA. We quote first from MIYANO's testimony:

10 "A When General HATA expressed his intention
11 of generous treatment of those fliers to Lieutenant
12 General USHIROGU, his Chief of Staff, Lieutenant General
13 USHIROGU on the same day wrote a letter to the Vice-
14 Chief of the General Staff in Tokyo, General TANABE,
15 stating the intentions of General HATA and asking the
16 intentions of the Tokyo Central Authorities. The letter
17 was forwarded to Tokyo by messenger on an airplane the
18 very same day.

19 "Q Then what happened?

20 "A As a result of the letter sent by Lieuten-
21 ant General USHIROGU to the Tokyo Central Authorities
22 stating the intentions of General HATA, Colonel ARISUE
23 came all the way from Tokyo as emissary from the Chief
24 of the General Staff and expressed the desires of the
25 Chief of the General Staff, which were: To carry out the

trial in a very strict manner, and that punishment must
1 be very strict. As a matter of fact, the Chief of the
2 General Staff was expecting the death sentence. Further,
3 it was the order of the Chief of the General Staff that
4 the decision of the trial be forwarded to Tokyo immedi-
5 ately for action by Tokyo. The execution of the
6 sentence should be stayed until the decision was for-
7 warded from Tokyo after action was taken in Tokyo on the
8 decision of the trial. Further, after execution of
9 sentence, no announcement was to be made by the China
10 Expeditionary Army Headquarters, but all announcements
11 relative to the trial, sentence and execution of
12 sentence would be made by Imperial Headquarters, in
13 Tokyo. In this connection, General HATA stated to
14 Colonel ARISUE that because of the seriousness and the
15 importance of the matter, he wanted the orders from
16 Tokyo in writing. Colonel ARISUE retorted that because
17 of the seriousness of the matter the Chief of the
18 General Staff had decided to forward the orders not in
19 writing but by his personal emissary, Colonel ARISUE him-
20 self, and that there was no more reliable way of convey-
21 ing those orders than by the use of high ranking officer
22 courier.
23
24

25 "Q After General HATA forwarded the orders of
Tokyo that the fliers should be tried, what further action

did he take with relation to the trial?

1 "A No further action.

2 "Q Did he appoint the members of the tri-
3 bunal?

4 "A No.

5 "Q Did he appoint the prosecutor?

6 "A No.

7 "Q Did he appoint the defense counsel?

8 "A No.

9 "Q Did he make any appointment for any
10 position with regard to the court or any of its members?

11 "A No, this was not within his province. The
12 trial was to be held by the 13th Army, which had its
13 headquarters in Shanghai, the place to which the fliers
14 had been delivered from Tokyo. With the arrival of
15 Colonel ARISUI with a complete set of orders from Tokyo
16 that they were to be tried by military court, which
17 military court did not exist in the Headquarters of the
18 China Expeditionary Force which was located in Nanking,
19 control of all matters in the trial was out of our hands.
20 As the Headquarters of the China Expeditionary Force,
21 we were now the channel through which all orders relative
22 to the trial would pass and would be forwarded on to the
23 13th Army in Shanghai.

24 "Q Did H.T.A. make known to the 13th Army his
25

intention to treat the fliers generously?

1 "A. No, because he had already been told by
2 the emissary of the Chief of the General Staff what the
3 intentions and desires were of the Chief of the General
4 Staff. HATA as a subordinate could not make any recom-
5 mendations of his own. If no orders had been received
6 from Tokyo as to the intentions and desires of the
7 General Staff, then General HATA as the highest authority
8 of the Japanese Army in China would have been permitted
9 to express his desires to the 13th Army. But since he
10 had been told directly by the emissary of the High Com-
11 mand, Colonel ARISUE, what the Tokyo authorities desired,
12 he had to control his own desires as to their treatment
13 or the demands to be made for sentence. However,
14 General HATA still did not give up his hope of giving
15 the fliers a light sentence because there was still the
16 order to forward to Tokyo immediately the decision of the
17 trial. Then again, the execution of sentence was to be
18 stayed until the decision of Tokyo was made known. On
19 these two points General HATA thought Tokyo would consider
20 the matter carefully and might mitigate the sentence or
21 might do something different after their minute consider-
22 ation of the entire case, so General HATA put every ex-
23 pectation on the further decision of the Tokyo people.
24
25

"Q Why didn't General HATA, when he received

the decision from Shanghai and then forwarded it to
1 Tokyo as per instructions, make any recommendation to
2 Tokyo to treat these people generously?

3 "A Since it has been ordered that the final
4 decision would be made in Tokyo, General HATA could not
5 suggest nor was it permissible for General HATA to sug-
6 gest again and again to his superiors in Tokyo what they
7 should do or to offer his recommendations. His inten-
8 tions of treating the fliers in a generous manner had
9 already been communicated to Tokyo through his Chief of
10 Staff and that was the reason why Tokyo had dispatched
11 Colonel ARISUE as emissary of the General Staff direct
12 to HATA to notify him of the contrary intentions of the
13 Tokyo Central Authorities. General HATA had good reason
14 to expect, since he knew that his personal intentions were
15 known to the General Staff and since they had ordered
16 that execution of sentence be stayed until further order
17 should be given by Tokyo they would mitigate the sent-
18 ences. Indeed, he was correct in this because later the
19 decision came from Tokyo saving the lives of five of the
20 fliers.
21

22 "Q How had General HATA's intentions to treat
23 these fliers in a fair manner become known to Tokyo?
24

25 "A When General HATA had disclosed his inten-
tions to his Chief of Staff, Lieutenant General USHIROCU,

1 Lieutenant General USHIROGU had reported it to the Vice-
2 Chief of the General Staff in Tokyo and had asked the
3 intentions and desires of the General Staff. That is
4 how the intentions of General HATA became known to the
5 General Staff and as a result of this knowledge, Colonel
6 ARISUE was dispatched to Nanking to give the orders and
7 the desires of the Chief of the General Staff for the
8 conduct of the trial to General HATA.

9 "Q When the fliers were tried by military
10 court under the newly promulgated military law promul-
11 gated by Tokyo and ordered posted in China, what
12 decision was open to the court to make?

13 "A It could find the fliers guilty or it
14 could acquit them.

15 "Q At any time during the entire proceedings
16 was General HATA as Commander of the Japanese Armies in
17 China permitted or authorized to exercise any discretion
18 in the setting up of the tribunal, its members, recom-
19 mendation to them of a decision?

20 "A No. With the arrival of Colonel ARISUE,
21 the entire matter was handled directly in accordance with
22 orders from Tokyo and in the same manner as if the trial
23 had been held in Tokyo. The only difference was that
24 Tokyo had sent the fliers back to Shanghai and had ordered
25 the trial held there. Everything, including decision to

1 hold the trial, the law under which the trial was to be
2 hold, the review of the sentence of the tribunal, the
3 time as to the execution of the sentence and even the
4 announcement of the trial and its sentence and the exe-
5 cution of the sentence were all handled by Tokyo. At
6 no time were we permitted or were we in any position to
7 alter or change any of those decisions or to offer our
8 own recommendations. From the very beginning after the
9 fliers were captured by the 11th Army and the 13th Army,
10 Tokyo assumed control of the entire matter. They were
11 ordered to Tokyo for questioning and examination and
12 then when that was finished the fliers were returned to
13 Shanghai and the order arrived that their trial should
14 be held in China."

15 That H.M.A. had no control over the situation,
16 or authority to act, is testified to as follows
17 (p. 28,882):

18 "A I only know that one day he told the com-
19 mander of the 13th Army, Lieutenant General SAWADA that,
20 'I do not know whether you like the sentence of the
21 tribunal or not, but that is a matter beyond my control.
22 I can do nothing about it.'"

23 SAWADA, as we have already quoted, stated on
24 cross-examination to Mr. Tavenner the same thing and Mr.
25 Tavenner stressed it when he asked (p. 27,468) in

speaking to HATA:

1 "Q You do recall that he said there was
2 'nothing for us to do,' that 'it would be reviewed in
3 Tokyo'?

4 "A Yes."

5
6 With reference to the torture of the Doolittle
7 fliers, in cross-examination by Mr. Sutton, MIYANO
8 stated (p. 28,888):

9 "A I will now answer. Let me reply to that
10 question. Matters of such a kind were completely out-
11 side the knowledge of the general headquarters at that
12 time, and I believe that General HATA also was unaware
13 of such incidents or instances, and I furthermore feel
14 that -- and it was not until now that he has ever heard
15 of that."

16
17 Later on we have this question and answer in
18 cross-examination by Mr. Sutton (p. 28,890):

19 "Q By whom was the order issued directing
20 that the fliers be tried?

21 "A The order was issued by the Chief of the
22 Army General Staff.

23 "Q You have stated that you have no means of
24 knowing how they were treated in Japan. Did you have
25 any means of knowing how they were treated in China under
the command of General HATA?

1 "A. We had the means to know, but I do not
2 think we were able to be informed of all the circum-
3 stances and facts.

4 "Q. Did you make any effort to ascertain the
5 true facts?

6 "A. At that time, operations were in progress
7 in China and only officers who were assigned to take
8 charge of the investigation, handling, etc., of these
9 fliers, were connected with the affair, and General
10 Headquarters did not know all the details or particulars
11 which would enable me to speak of such details."

12 That Tokyo, and not H.M.A., ordered the trial of
13 the Doolittle fliers was brought out very nicely for
14 us by Mr. Sutton's cross-examination of MIYANO (p. 28893):

15 "MR. SUTTON: May the witness be shown exhibit
16 1992.

17 "Q. Is that the order which you referred to
18 as having been received from Tokyo authorizing the trial
19 of these fliers by the China Expeditionary Forces?
20

21 "A. No, this particular document here was
22 prepared by the war office establishing a regulation as
23 to the handling of the Doolittle fliers and is not con-
24 cerned with the question of placing these fliers on
25 trial before a military court. What I have been talking
about previously was an order sent by the Vice-Chief of

1 Staff in Tokyo in the name of the Chief of the Army
2 General Staff ordering the trial, which order was sent
3 by the General Staff Office in Tokyo to the China
4 Expeditionary Force.

5 "Q. What is the date of the order which you
6 have in your hand, exhibit 1992?

7 "A. July 28.

8 "MR. SUTTON: May the witness be shown exhibit
9 1993.

10 "Q. Is this one of the orders to which you
11 referred?

12 "A. Yes.

13 "Q. And what is the date of the order of
14 exhibit 1993?

15 "A. July 28."

16 Thus we can see from the prosecution's own
17 cross-examination of MIYANO and by its own exhibit
18 that HATA had received orders from Tokyo to try the
19 Doolittle fliers, and the law for their trial had been
20 promulgated in Tokyo. It was after HATA sent a letter
21 on 30 July (p. 28,893) that he did not wish to try the
22 fliers as war criminals, that Colonel ARISUE was sent to
23 China by the General Staff in Tokyo with orders that the
24 trial would be held, despite HATA's wishes.
25

THE PRESIDENT: This is a convenient break.

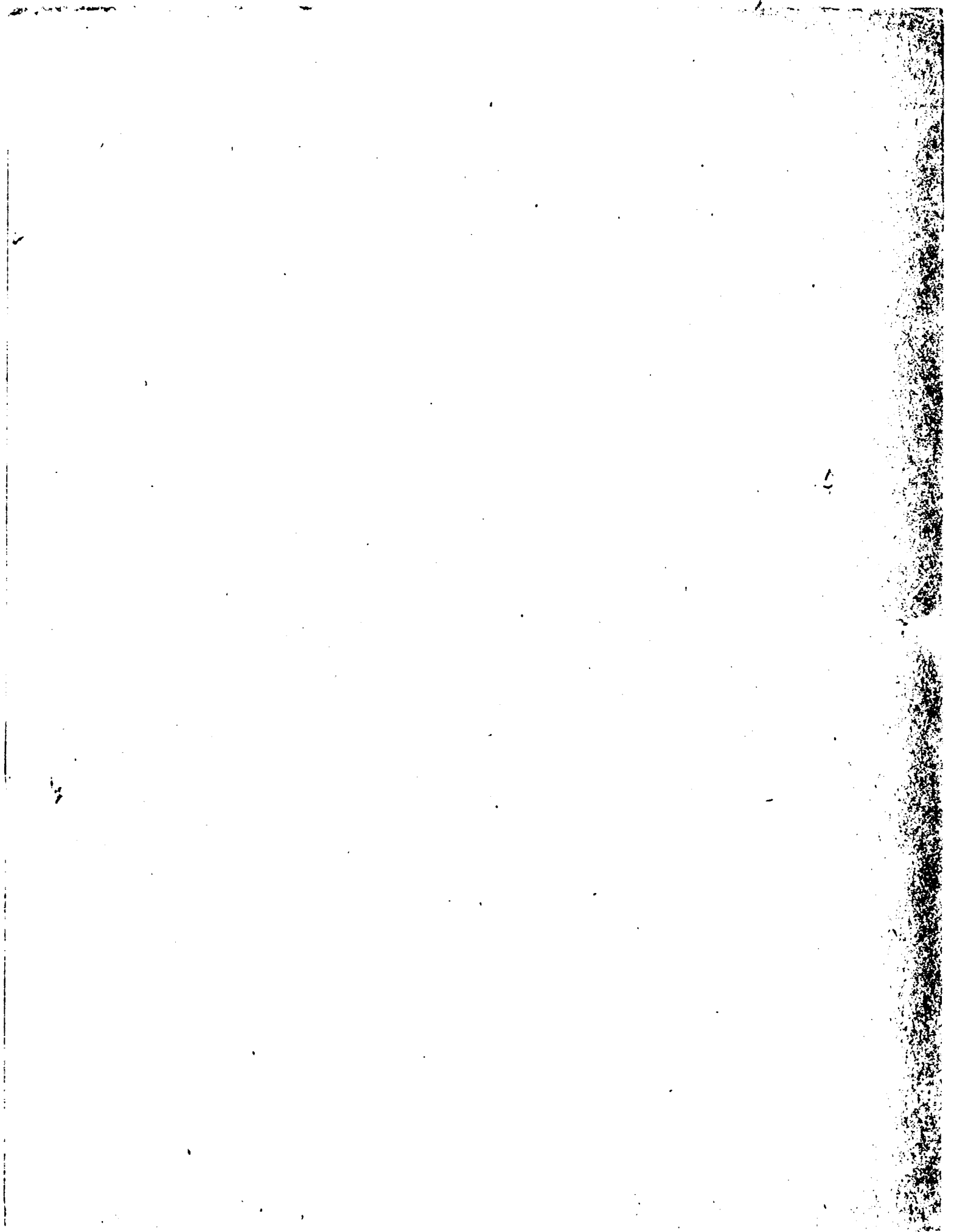
1 You are getting on to TANAKA's evidence.

2 We will adjourn until half past nine tomorrow
3 morning.

4 (Whereupon, at 1600, an adjourn-
5 ment was taken until Friday, 12 March 1948,
6 at 0930.)

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12 MARCH 1948

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Friday, 12 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

4
5
6
7 The Tribunal met, pursuant to adjournment,
8 at 0930.

9 Appearances:

10 For the Tribunal, all Members sitting.

11 For the Prosecution Section, same as before.

12 For the Defense Section, same as before.

13 - - -
14

15 (English to Japanese and Japanese
16 to English interpretation was made by the
17 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI and UMEZU who are
5 represented by counsel. The Prison Surgeon at
6 Sugamo certifies that they are ill and unable to
7 attend the trial today. The certificates will be
8 recorded and filed.

9 With the Tribunal's permission, the accused
10 KAYA will be absent from the courtroom the entire
11 day conferring with his counsel.

12 Mr. Lazarus.

13 MR. LAZARUS: If the Tribunal please, the
14 middle of page 138.

15 THE PRESIDENT: Some of these quotations are
16 very extensive, Mr. Lazarus. We may yet have to
17 decide to pass over these without reading them, simply
18 directing that they be copied into the transcript.

19 MR. LAZARUS: As you pointed out yourself,
20 Mr. President, by paraphrasing, sometimes an incor-
21 rect interpretation on the evidence is placed; whereas,
22 by quoting the evidence and then merely commenting in
23 one sentence, we save time, we think, and really
24 assist the Tribunal.

25 THE PRESIDENT: I did not suggest paraphrasing.

1 I suggested the quotations should not be as long as
2 they are. However, proceed to read.

3 MR. LAZARUS: Thank you.

4 On this point, General TANAKA testified as
5 follows: (p. 29,043):

6 "When the decision was announced that the
7 fliers would be tried by the newly promulgated mili-
8 tary law, I protested the decision to General TANABE,
9 Vice-Chief of the General Staff, and stated to him
10 that in my opinion the fliers should be treated as
11 prisoners of war. General TANABE stated that he
12 agreed with me and not only was that so, but that he
13 had just received a letter from General USHIROGU,
14 General HATA's Chief of Staff, stating that General
15 HATA was of the opinion himself, that he, HATA, de-
16 sired to treat the fliers as prisoners of war. Gen-
17 eral TANABE then stated that nothing could be done
18 about the matter because the General Staff had al-
19 ready made the decision that the fliers must be tried
20 by military law."

21
22 And (p. 29,044):

23 "As a result of the receipt of this letter
24 from General USHIROGU stating the position of General
25 HATA with reference to the fliers, Colonel ARISUE was
dispatched from Tokyo by the General Staff to HATA to

1 give HATA the orders and the desires of the General
2 Staff. The General Staff in Tokyo was afraid that
3 HATA would not carry out the instructions of putting
4 the fliers to trial and Colonel ARISUE was sent to
5 HATA to notify HATA that he was to go as he was
6 ordered and that no theory or logic on his part with
7 reference to this case would be accepted by Tokyo.
8 Moreover, there was another apprehension among the
9 members of the General Staff, that even if the China
10 Expeditionary Force tried these fliers, they might
11 have found a decision of not guilty and that HATA
12 would then have released them after trial and this the
13 General Staff feared.

15 "Thus, as the matter stood, all orders and
16 directives with reference to the trial were issued by
17 the General Staff in Tokyo and the trial was held by
18 the 13th Army in China. Hence, in this trial, General
19 Headquarters of the China Expeditionary Army merely
20 acted as a channel through which were transmitted the
21 orders of the General Staff in Tokyo to the 13th Army
22 where the trial was being held. There was absolutely
23 no room left whatsoever for the use of any discretion
24 or judgment on the part of the members of the Head-
25 quarters of the China Expeditionary Force with refer-
ence to this trial."

1 Returning to Mr. Sutton's cross-examination
2 of MIYANO we have the following: (p. 23,395)

3 "Q Did General HATA order the 13th Army to set
4 up a military tribunal to try these fliers?

5 "A There was no such piecemeal orders. The
6 general instructions issued by General HATA to the
7 13th Army was in connection with the prospective
8 trial of the Doolittle fliers before a military
9 court. The 13th Army was first to investigate into
10 the conditions and circumstances to find out whether
11 or not a military court trial -- the conditions would
12 warrant a military trial of these fliers, and other
13 necessary matters.

14 "General HATA furthermore issued a general
15 order to the 13th Army to the effect that they must
16 not conduct -- establish or conduct a military trial
17 of these fliers pending orders from the Commander in
18 Chief of the China Expeditionary Force. Meanwhile,
19 he communicated to Tokyo to the effect that he was
20 opposed to conducting a military trial of these fliers.
21

22 "Q When did he communicate to Tokyo?

23 "A As I have said before, toward the end of
24 July."

25 Continuing with Mr. Sutton's cross-examination
of MIYANO, we learn (p. 23,399):-

1 "Q Was any counsel provided for the fliers at
that trial?

2 "A No counsel was provided in accordance with
3 the provisions establishing the military court. May
4 I add that it is Japanese military regulations that
5 it is Japanese military regulations that neither
6 General HATA nor Lieutenant General SAWADA could make
7 any modifications or changes providing for a counsel
8 for the defense for the fliers."
9

10 Next, we learn (28,901):

11 "Q Did General HATA receive a report of this
12 trial?

13 "A Yes.

14 "Q Did the report show the circumstances surround-
15 ing the trial and conviction of these eight fliers?

16 "A Yes, it does; but no reports were made to
17 the Commander in Chief of the China Expeditionary
18 Forces as to the manner in which the trial was con-
19 ducted.

20 "Q What did the reports show?

21 "A The judgment and the reason for the judgment.

22 "Q What reasons were given for the judgment?

23 "A In the reasons -- among the reasons it was
24 stated that these fliers, both in Tokyo and Nagoya,
25 machine-gunned primary school children and bombed

1 civilian homes which could be very clearly disting-
2 uished from military objects."

3 Continuing (28,902):-

4 "Q Why was the report sent to General HATA?

5 "A Reports to be sent to Tokyo were channeled
6 through General HATA's headquarters."

7 Continuing the cross-examination by Mr.
8 Sutton (28,903):

9 "Q Did General HATA, at any time, after the
10 trial, suggest any special circumstances or mitigation
11 of punishment?

12 "A Inasmuch as General HATA had already communi-
13 cated his position on the matter, that is to say, his
14 objections to the trial, to the central military
15 authorities; and inasmuch as he was on very intimate
16 terms with the Chief of the Army General Staff, having
17 graduated from the military academy in the same year,
18 and inasmuch as General HATA placed his confidence in
19 the views he had already set forth to the central
20 military authorities, and because he had other reasons,
21 he felt that there was no need to write another recom-
22 mendation in order to realize what he had wanted to
23 realize, and therefore found no need to go into fur-
24 ther investigations to find reasons for making further
25 recommendations to the central military authorities."

1 This, then answers Mr. Tavenner's question,
2 previously quoted, on HATA's failure to make another
3 recommendation in behalf of the fliers after he had
4 already tried unsuccessfully to stop their trial as
5 war criminals.

6 And finally we turn to the last defense wit-
7 ness on the Doolittle trial, General TANAKA, Ryukichi
8 (29,041):-

9 "At the time of the raid on Tokyo by the
10 American fliers in April of 1942, I was Chief of the
11 Military Service Section of the War Ministry. Because
12 during the raid school children had been shot and
13 non-military areas had been bombed there were different
14 opinions as to the treatment to be given fliers who
15 became prisoners. The General Staff in Tokyo decided
16 that all decisions as to the trial and treatment of the
17 captured fliers should be exclusively within the prov-
18 ince of the General Staff itself. Hence, as soon as
19 the fliers were captured in China the General Staff
20 ordered their immediate delivery to Tokyo. All rela-
21 tive investigations were made in Tokyo and preparations
22 were made to hold the trial of the fliers in Tokyo.
23 However, as to the treatment to be given the fliers
24 there developed two different opinions. One opinion
25 was supported by the General Staff and the other by

1 the War Ministry. Because of these conflicting opin-
2 ions the General Staff suddenly gave up its intention
3 to hold the trial in Tokyo and ordered that the trial
4 be held in China and an order to that effect was for-
5 warded to the China Expeditionary Army Headquarters
6 and the fliers themselves were sent to Shanghai.

7 "In those days there weren't any regulations
8 that fliers could be tried by a military court and so
9 in Tokyo a new military law as to the treatment of
10 fliers who raided the Japanese homeland and the area
11 under its control was promulgated and a copy of the
12 new order was forwarded to the China Expeditionary
13 Force with orders that the same law would be in ef-
14 fect in the areas controlled by the Japanese armies in
15 China also. In the same order containing the informa-
16 tion about the new military law just promulgated, was
17 contained an order to Headquarters of the Japanese
18 Expeditionary Army in China that the fliers would be
19 tried under this law in China. Because there was no
20 military court set up in the Headquarters of the China
21 Expeditionary Forces at Nanking, the trial was to be
22 held by the 13th Army at its headquarters in Shanghai."

23 Mr. Keenan cross-examined TANAKA as follows
24 (p. 29,055):-
25

"Q Were they sent back to China before the law

was promulgated or afterwards?

1 "A. If my recollection serves me right, the law
2 was promulgated toward the end of July whereas the
3 fliers were sent to China on the 18th of June. The
4 draft plan of the military law, of course, had been
5 drawn up long before, but because of violent opposi-
6 tion, the promulgation, the actual promulgation of
7 the law, had been delayed."

8
9 The President of the Tribunal questioned
10 TANAKA as follows (p. 29,057):-

11 "The President: A colleague desires further
12 particulars about those two orders to hold a trial and
13 punish severely. Did the second order come before the
14 trial was concluded?

15 "The Witness: The order came before the
16 trial was even started. This order was communicated
17 verbally through Colonel ARISUYE.

18 "The President: To whom was the order
19 directed?

20 "The Witness: The Chief of the General Staff
21 personally sent Colonel ARISUYE as his emissary to
22 General HATA, Commander of the forces in China, and
23 communicated this order."
24

25 With all this, then, the cross-examination
of SAWADA, the examination and cross-examination of

1 MIYASE and TANAKA, it is conclusively clear that HATA
2 was not the originating or initiating authority in
3 this trial. Everything about this trial, from be-
4 ginning to end, was handled by Tokyo, including the
5 promulgation of the law in Tokyo, 28 July, and which
6 was published in China 13 August (exhibit 1992 and
7 1991), the order to try the fliers (exhibit 1993,
8 28 July), the review of the decision, the commutation
9 of sentence for some, and the order to carry out the
10 execution for the others. HATA never appointed the
11 court, or had authority to review or revise the sen-
12 tence. At all times, HATA was only in the chain of
13 command because of his position in China through
14 whose headquarters orders to the 13th Army from Tokyo
15 had to be channeled.

16 Now let us turn our attention to the prose-
17 cution's rebuttal evidence. In an attempt to rebut
18 the evidence offered by defense witnesses, the prose-
19 cution introduced in rebuttal an interrogation of
20 YONAI by a USSR officer dated May 15, 1946. During
21 cross-examination, Admiral YONAI had denied that he
22 had made some of the answers contained in the interro-
23 gation. Even the most favorable parts of this excerpt,
24 from the prosecution's point of view, contain evidence
25 to support the testimony introduced by the defense

1 that HATA was forced by the General Staff to resign
2 as War Minister in the YONAI Cabinet. For instance
3 (33,000):

4 "Q What were the reasons for the resignation of
5 Minister of War in your cabinet?

6 "A The reason for resignation of Minister of
7 War was that my cabinet was by the composition a weak
8 one, and the Minister of War, being in the cabinet,
9 was unable to exercise the control over Army."

10 The last question and answer in the first
11 portion of this excerpt from the interrogation are
12 as follows: (p. 38,001)

13 "Q What point of view concerning the conclusion
14 of a military alliance between Japan and Germany did
15 HATA, Shunroku support?

16 "A HATA, Shunroku thought that the conclusion
17 of a treaty between Japan and Germany at that time
18 would be advantageous to Japan."

19 YONAI denied emphatically on cross-examination
20 that he had given such an answer (p. 28,921).

21 And now, here, if the Tribunal please, we
22 have quoted the balance of this exhibit for identifi-
23 cation, and the prosecution's objection was sustained
24 by the Tribunal to our quoting any such type of evi-
25 dence which we felt was in answer to the prosecution's

1 excerpt. Therefore, we will omit that page, unless
2 the Tribunal should feel it proper to be read.

3 THE PRESIDENT: The summation must be con-
4 fined, Mr. Lazarus, to evidence that has been ad-
5 mitted.

6 MR. LAZARUS: Then, if the Tribunal please,
7 page 148 also contains additional quotations from
8 that same prosecution excerpt, and we will skip that
9 page and page 149, if the Tribunal please. We, there-
10 fore, will resume at the top of page 150:

11 Next the prosecution introduced two excerpts
12 from the record of the budget committee of the 75th
13 Diet, 22 March, 1940, and 7 February 1940 (exhibit
14 3832, p. 38,015, exhibit 3833, p. 33,025). This is
15 the only time that HATA has made any statement that
16 has been officially quoted and presented to this Tri-
17 bunal. And here again in these prosecution exhibits
18 we find support for our evidence that HATA was not
19 pre-Tripartite Pact and always supported strongly the
20 YONAI Cabinet. HATA is quoted as follows: (p. 33,022)

21 "You referred to our following England and
22 America or otherwise Germany and Italy, and although
23 I have some opinion on the prospect of the European
24 War from my specialistic viewpoint, I refrain from
25 discussing it now."

1 If HATA had been pro-Tripartite Pact, here
2 was his opportunity to say so, when he had been ques-
3 tioned by a Dict member on foreign policy. Proving
4 that he was against tying Japan in with any foreign
5 group or bloc, he immediately continues:

6 "In short, there are various blocs, such as
7 Anglo-American bloc, or German-Italian bloc, but as
8 far us, in order to settle the incident, there will
9 be no change in our policy which is to concentrate
10 all our ability to exclude any third power which would
11 persistently interfere with the establishment of the
12 new order in East Asia."

13 Here is a clear statement of support for
14 YONAI Cabinet policy which has been praised by Keenan
15 and Tavenner as anti-Tripartite Pact, for HATA says
16 "there will be no change in our policy" which was
17 "to exclude any third power."

18 THE PRESIDENT: You must refer to counsel in
19 respectful terms. You mean Mr. Keenan and Mr. Taven-
20 ner.

21 MR. LAZARUS: Yes, Mr. President. I always
22 have "Mr." except there:

23 THE PRESIDENT: It is not like you to use
24 that phraseology, Mr. Lazarus.

25 MR. LAZARUS: If the Tribunal please, I always

1 had "Mr." before.

2 This surely lays at rest any prosecution con-
3 tention that HATA opposed the YONAI Cabinet policy.
4 And, finally, Mr. Sutton read from the second of
5 the two above-named exhibits only this part and we
6 quote it as the final, clinching evidence that HATA
7 did always support the YONAI Cabinet and its policy
8 (p. 38,025):

9 "State Minister HATA: This question is very
10 important and naturally, I am of the opinion that we
11 should follow the government's policy."

12 And so, we respectfully submit, the last nail
13 is driven into the coffin of the prosecution's allega-
14 tion that HATA opposed the YONAI Government or its
15 policy, and it is very fitting, we think, that this
16 last nail should be driven in with the prosecution's
17 own rebuttal evidence.

18 Continuing his rebuttal evidence, Mr. Sutton
19 next introduced in evidence the record of the trial
20 "United States of America vs. Shigeru SAWADA et al"
21 (exhibit 3834 for identification, page 38,030). His
22 first excerpt therefrom was the very lengthy testimony
23 of two surviving American Doolittle fliers on their
24 mistreatment and torture in China and in Tokyo before
25 their trial. At no time during the case of General

HATA had ve introduced any evidence with reference
1 to any atrocities. But the prosecution introduced
2 this excerpt and tried to lay the blame for these
3 atrocities at the feet of General HATA. Let us see
4 who did know about the mistreatment of the fliers and
5 was in a position to stop it.
6

7 Here again, if the Tribunal please, we have
8 quoted from the same prosecution exhibit which had
9 not been offered in evidence, and we will strike it
10 at the request of the Tribunal. We will resume on
11 page 153 at the bottom:

12 And, the Tribunal will remember that earlier
13 in this summation we quoted SAWADA's statements before
14 this Tribunal that the very first time that he consulted
15 with HATA about the fliers was one month after the
16 completion of their trial. HATA in no way was re-
17 sponsible for what SAWADA was doing to these boys while
18 they were under SAWADA's control.
19

20 And the last piece of rebuttal evidence offered
21 by the prosecution was the testimony of MIYANO at the
22 SAWADA trial (38,059). This was to rebut the testi-
23 mony of MIYANO. In substance, this rebuttal testimony
24 is to the effect that HATA had requested the death sen-
25 tence. MIYANO stated before this Tribunal after Mr.
Sutton had read this testimony to him (23,905):

1 "In the document that was just read to me,
2 there were words to the effect that a demand was made
3 for the execution of the sentence, or something to
4 that effect, but no such demand was actually made.

5 "With regard to the request made, the so-
6 called request made by General HATA to the prosecu-
7 tor to demand the death penalty, my statement, the
8 statement I actually made was that such a demand was
9 supposed to have been made. I said at that trial
10 that since an order had come from the Chief of the
11 Army General Staff, that order was supposed to have
12 been delivered, but at the trial in Shanghai, SAWADA
13 said that he had not heard of that before. Neither
14 did any of his co-defendants say that they heard it
15 before. The fact is they had not heard of it before,
16 and so I will have to revise my recollection on this
17 matter, and say that I do not know."

18 Continuing his cross-examination (28,907),
19 Mr. Sutton quoted and then asked as follows:

20 "Q Did you mean by your previous answer that
21 HATA requested the 13th Army prosecutor to ask for
22 the death penalty?
23

24 "A He requested so."

25 Later we have this (28,914):

"A I deny the fact -- the portion that runs to

1 the effect that General HATA has asked the prosecutor
2 to ask for the death sentence. I do not -- since I
3 did not know the facts, I replied that such a request
4 was supposed to have been made."

5 The excerpt from the trial itself is the
6 best evidence of how this mix-up arose (38,059):

7 "Q Was the trial of the Doolittle fliers ordered
8 by General HATA to be tried at Shanghai?

9 "A Yes.

10 "Q Do you mean by your previous answer that
11 HATA requested the 13th Army prosecutor to ask for
12 the death penalty?"

13 Now here, if the Tribunal please, is the be-
14 ginning of the difficulty in interpretation. For how
15 could an examiner draw such a conclusion as he did
16 on his second question as a request for a death pen-
17 alty from a simple answer of "yes" to a question as
18 to whether HATA had ordered the trial? When this
19 immediately follows the second question:

20 "A He requested so. (To interpreter): Will you
21 interpret that again?

22 "Interpreter: He said he requested so --
23 requested that the sentence be executed; he requested
24 so."
25

Here the interpreter, without again asking

1 MIYANO, gives a second interpretation of what MIYANO
2 said. This time a request for the execution of sen-
3 tence, even though neither of the two previous ques-
4 tions in any way calls for such an answer. The ex-
5 cerpt continues immediately:

6 "Q Does he mean the General requested so?

7 "A Yes, HATA.

8 "Q Did General HATA request the prosecutor of
9 the 13th Army to ask for the death sentence?

10 "A He requested the death sentence."

11 The interpretation, obviously, is so poor
12 with non-responsive answers being interpreted, that we
13 have to look to the rest of the evidence to see whether
14 or not HATA had indeed made such a request. MIYANO
15 as heretofore quoted stated before this Tribunal that
16 such a demand was "supposed to have been made" and
17 (23,911) "that since an order had come from the Chief
18 of the Army General Staff, that order was supposed to
19 have been delivered." But that at the SAWADA trial in
20 Shanghai, he, SAWADA, said that "he had not heard of
21 that before. Neither did any of his co-defendants say
22 that they had heard it before."
23

24 In sur-rebuttal we sought to answer this
25 excerpt offered by the prosecution by introducing
other excerpts from the SAWADA trial to show that just

1 as MIYANO had told this Tribunal, none of the defend-
2 ants in the SAWADA trial had heard it before.

3 Then, if the Tribunal please, although we
4 do not quote, we say that the trial revealed that no
5 one had stated that HATA had made the request, and it
6 has been suggested that it would be improper to make
7 such an observation.

8 THE PRESIDENT: You are not at liberty to
9 refer in that way to something not in evidence.

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1 MR. LAZARUS: We will begin, therefore, with
2 "They all testified that the death sentence request
3 had, instead, come from Tokyo and had been made, not
4 by HATA, Shunroku, but by Major HATA, Itsuro, the
5 prosecutor at the Doolittle trial."

6 Then we skip the next few sentences.

7 THE PRESIDENT: Who are "they"? Those who
8 testified in the former trial? That should come out,
9 too.

10 MR. LAZARUS: I have got an exhibit there,
11 Mr. President.

12 THE PRESIDENT: Well, you can put in anything
13 that is in the exhibit certainly.

14 MR. LAZARUS: The expression "they all testi-
15 fied," that may come out, but the rest is definitely
16 based on that exhibit: "The death sentence request
17 had, instead, come from Tokyo and had been made, not
18 by HATA, Shunroku, but by Major HATA, Itsuro, the
19 prosecutor at the Doolittle trial," and that is in
20 evidence.

21 Then we skip the next sentence and begin with:

22 And we again respectfully refer the Tribunal
23 to SAWADA's statement that he never spoke to HATA about
24 the Doolittle trial till one month after the trial was
25 over and -- skip the first three lines there and the

1 first word on the fourth line -- there is not one
2 mention or a suggestion anywhere that anyone consulted
3 with General HATA, Shunroku, until after the trial was
4 all over. And the most convincing argument we can ad-
5 vance on this point, if the Tribunal please, is the
6 fact that if any such consultation had taken place,
7 the prosecution would most certainly have introduced
8 that evidence. They have introduced no such evidence.

9 And the final and most conclusive evidence
10 that HATA had no responsibility for the Doolittle trial
11 is found in the excerpt of the SAWADA trial record
12 that the Tribunal did accept over the prosecution's ob-
13 jections (Ex. 3867, p. 38,616):

14 "8 Oct. 1942

15 "On this day, orders were issued for
16 the change in command of the 13th Army.
17 Lt. Gen. SAWADA was in Shanghai at the time,
18 while Lt. Gen. SHIMOMURA, Commandant of the
19 Army General Staff College up to this date,
20 was in Saitama province, engaged in maneuvers
21 which had been going on since 1 Oct. However,
22 he was immediately recalled to Tokyo and as-
23 signed as army commander.

24 "9 Oct. 1942

25 "Lt. Gen. SHIMOMURA makes courtesy call

to Imperial Headquarters.

1 "Up to this day (9 Oct.) Lt. Gen. SHINOMURA
2 had absolutely no connection with this incident.
3 Therefore, he asked for a more detailed explanation
4 and was given the following answer by the
5 Chief of the General Staff:
6

7 " 'This affair has been thoroughly
8 investigated and the final decision has been
9 made in Tokyo. As a result, there is nothing
10 that Shanghai or Nanking can do about this
11 decision except carry it out. As to the
12 details and procedures of the trial, you can
13 get a report from the one responsible at the
14 time, when you reach Shanghai. '"

15 The last word is all-important. It isn't
16 Nanking, HATA's Headquarters, but Shanghai, 13th Army
17 Headquarters. And "there is nothing Shanghai or Nan-
18 king can do about it, except carry it out." We rest
19 with that.

20 Lastly, we turn our attention to the prosecu-
21 tion summation. Just as we have feared, based on past
22 experience before this Tribunal, the summation is a
23 desperate attempt to make out a case against the ac-
24 cused HATA by bringing in the most far-fetched evi-
25 dence which has no connection with him. The summation

1 is replete with contradictions to the prosecution's
2 general summation and to the prosecution's summations
3 against other individual accused.

4 The summation against HATA contains misin-
5 terpretations of evidence in the record, based on
6 fractions of sentences lifted from the record. We
7 know, from the very nature of the prosecution's case
8 against HATA, built as it is on hearsay, innuendoes,
9 and conclusions and inferences drawn from evidence
10 introduced against other accused before this Tribunal,
11 that the prosecution would, in its summation, have to
12 resort to such tactics. Therefore, we set out at
13 length, the full and complete testimony and evidence
14 about HATA so that the Tribunal could render its de-
15 cision on all the evidence, and not on mere fractions
16 of sentences. Because of the fullness of our exposition
17 of all the evidence as heretofore made, we have found
18 on receipt of the prosecution's summation against HATA,
19 that there is very little left for us to answer. We
20 will take note only of the more glaring examples of
21 misinformation contained in this summation and rely
22 completely on the full exposition of the evidence
23 already set out hereinbefore.
24

25 Mr. Sutton tells us that HATA's first period
of waging war in China falls into two divisions: First.

1 as Military Councillor and Inspector-General of
2 Military Education from August 1937 to February 1938,
3 and secondly, as Commander of the Central China Ex-
4 peditionary Forces from February 1938 to December
5 1938.

6 Throughout his entire summation, Mr. Sutton
7 takes an abnormal interest in the post of Military
8 Councillor. While he refers to it on three occasions
9 and tries to make the position appear to be one of
10 power, he never once offers a single citation, it will
11 be noted, to show what the position of Military Council-
12 lor is and what functions, if any HATA performed
13 while he held that position. He does not tell the
14 Tribunal that the post of Military Councillor is an
15 interim post given to the highest-ranking Japanese
16 officers while they are being transferred from one
17 post to another, or while they have no position of
18 command at the moment and are awaiting appointment to
19 their next post or station.

20
21 Let us examine the identical exhibit which
22 Mr. Sutton cites for his authority that HATA held
23 this position three times (exhibit 106, p. 701). We
24 see (p. 702) under 2 August 1937, while HATA was
25 Commander of the Formosan Army, and before he was
appointed Inspector-General of Military Education:

1 "Released from the above post and appointed Military
2 Councillor." Under date of 15 December 1938 when he
3 was released as Commander of the Expeditionary Forces
4 in China, and before he was appointed Chief Aide-de-
5 Camp to the Emperor, we find: "Released from the
6 above post and appointed Military Councillor." And,
7 after his resignation as War Minister in the YONAI
8 Cabinet and before his appointment as Commander in
9 Chief of the Expeditionary Forces in China, we find,
10 under date 22 July 1940: "Released from the additional
11 and regular posts by request and appointed Military
12 Councillor."

13 With this as a background, then, we proceed
14 to analyze Mr. Sutton's summation on this point
15 (p. DD 4). Speaking of HATA's first appointment as
16 Military Councillor on 2 August 1937, and before he
17 became Inspector-General of Military Education, Mr.
18 Sutton says: "It was then his duty and responsibility
19 to advise the Cabinet on military matters." There is
20 no citation to show where Mr. Sutton had the idea
21 that it was the Military Councillor's duty to advise
22 the Cabinet, and, more important still, there is no
23 citation to show that any advice was given on any
24 action taken by HATA while he held this interim post.
25 This will be true throughout all such statements by

1 Mr. Sutton. He never gives a single citation on the
2 post of Military Councillor, though he tries to make
3 capital of it.

4 The post of Military Councillor may be held
5 concurrently with another post if the high-ranking
6 Japanese officer is to hold the second post but a
7 short time. HATA held the post of Inspector-General
8 of Military Education less than six months before
9 he was sent to China.

10 Mr. Sutton next tells us that HATA moved
11 (DD 5) "from the position of Military Councillor
12 where he advised concerning military operations. . .",
13 but he again mysteriously fails to give a single
14 citation to show any advice given on military oper-
15 ations. Speaking of the post of Inspector-General
16 of Military Education, he says: "As a member of the
17 Big Three, controlled the appointment of War Minister,
18 and had it in his power to make and destroy cabinets..."
19 Here we must point out again that the prosecution
20 does not tell the Tribunal that HATA did not control
21 the appointment of a War Minister, simply because no
22 new War Minister was appointed during this period.

23 Mr. Sutton's second point with reference to
24 this period in HATA's career is that HATA waged war
25 as a General in China. We have already dealt

1 sufficiently with that point in the beginning of
2 our summation. Our position remains that an officer
3 who fights for his country after it has embarked on
4 a war in whose planning and initiation he had no part,
5 is not waging war. After having gone through HATA's
6 period as Commanding General in China, and speaking
7 of his being relieved of that post on 15 December
8 1938, Mr. Sutton states (DD 8): "And on the same
9 day was brought again into the inner circles of govern-
10 ment as Military Councillor." Again no citation as
11 to what this post is and what HATA did while holding
12 it. Mr. Sutton nevertheless calls it "the inner
13 circles of government."

14 Next, the summation takes up Hankow and the
15 testimony of Dorrance, the prosecution's only witness
16 on the alleged atrocities committed there. It men-
17 tions that Dorrance testified about dead "Chinese men
18 dressed in Chinese gowns with their hands wired behind
19 them," but it does not tell the Court that Dorrance
20 said (p. 3396): "On the street corners. . . oh, I
21 saw probably six or seven on different corners. . .",
22 and, further, he does not tell the Tribunal who had
23 shot these people. There is no evidence whatever that
24 these six or seven dead had been shot by Japanese.
25 It could have been done by Communists, it could have

1 been done by bandits, it could have been done by
2 anyone. Dorrance did not undertake to say who had
3 done it.

4 HATA, if the Tribunal please, had been ex-
5 amined in Sugamo only once, before this trial. That
6 examination was introduced as exhibit 256 (p. 3,451)
7 and the exhibit shows that it was taken by Colonel
8 Morrow, the same prosecutor who introduced and ex-
9 amined the witness Dorrance before this Tribunal.
10 The exhibit reveals Colonel Morrow had examined HATA
11 on the Hankow campaign, but never once asked a single
12 question of HATA about atrocities or even mentioned
13 that subject with reference to Hankow. And the pros-
14 ecution's evidence, by a very inadequate witness at
15 that, shows that the prosecution was right in not
16 quizzing HATA on atrocities. There just weren't any
17 atrocities at Hankow.

18 In closing the Hankow matter, we quote from
19 the prosecution's general summation (p. J-32): "There
20 is no evidence of the atrocities at Hankow having
21 been brought to the notice of the Japanese govern-
22 ment....." We refer the Tribunal to our complete
23 exposition of all the evidence on Hankow earlier in
24 this summation.
25

Mr. Sutton next tries to make out an opium

1 and narcotics case against HATA although, in the
2 entire prosecution case he cannot point to a single
3 citation where the name of HATA was connected with
4 opium. That opium has been sold in China we do not
5 dispute. China's age-old sorrow even brought on the
6 opium wars with England and France in the middle
7 nineteenth century. In this instance, Mr. Sutton steps
8 in where Mr. Carr did not tread, for Mr. Carr, in
9 answer to our motion for dismissal, very properly
10 never even suggested that HATA was connected with
11 the opium trade. So desperate is Mr. Sutton because
12 of the lack of evidence to prove any connection be-
13 tween HATA and opium, that he quote the denial by a
14 defense witness of HATA's connection with opium and then
15 says it is difficult to understand. Here again we
16 must point out to the Tribunal that when HATA was
17 examined in Susumo on his activities as Commander in
18 China, not one word was mentioned about opium by the
19 interrogators.
20

21 Mr. Sutton continues his preoccupation with
22 reference to the post of Military Councillor. He
23 tells us (DD 12): "It is reasonable to infer that
24 those closest to the new order in East Asia would
25 seek the advice of the one who had so successfully
carried their banner through China. On 15 December

1 1938 HATA was appointed as Military Councillor in
2 the First KONOYE Cabinet and exactly one week later
3 on 22 December 1938 Premier KONOYE issued a state-
4 ment...." on Japan's policy in China. Mr. Sutton
5 tries to infer that HATA must have advised this as
6 Military Councillor, but we look again and again in
7 vain for any citation showing HATA's connection or
8 the functions of a Military Councillor. As we have
9 already quoted from HATA's record, HATA became
10 Military Councillor upon being relieved as Commander
11 in China and remained in that post until he became
12 Aide-de-Camp to the Emperor.

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We next learn (D.D. 13) with reference to
1 HATA's appointment as War Minister in the ABE Cabinet:
2 "The fact that he had served as Aide-de-Camp and would
3 be acceptable to the Emperor, gave to the conspirators
4 an opportunity to hold at least one of their inner
5 group in the ABE Cabinet. . . ." We have already gone
6 thoroughly into HATA's appointment to the ABE Cabinet
7 and quoted at length Mr. Keenan's cross-examination
8 of KIDO on this point, in which the Chief Prosecutor
9 held up HATA's appointment as a personal act of the
10 Emperor in opposition to the militarists' recommenda-
11 tion of another man unacceptable to the Emperor. Mr.
12 Sutton should read what his superior says in this
13 court and try not to contradict him in his summation.
14

15 The summation next takes up HATA's appointment
16 of MUTO (D.D. 15), and here we see how evidence is
17 misinterpreted when a mere reference is made to two or
18 three words only from an entire testimony, which testi-
19 mony is in direct opposition to the interpretation given
20 it by Mr. Sutton. Mr. Sutton says: "TANAKA quoted
21 HATA as having stated that MUTO influenced his resig-
22 nation as War Minister. There may be question as to
23 the extent to which HATA's appointee and subordinate
24 in the War Ministry, MUTO, could have encouraged HATA
25 in his decision to destroy the YOKAI Cabinet, but this

1 does show the close and intimate relationship between
2 these two co-conspirators." Now, let us look at the
3 record, on the same page cited by Mr. Sutton for this
4 conclusion of his, TANAKA, testifying as a prosecution
5 witness states: "Shortly after I became Chief of the
6 Military Service Bureau in 1940, I had an occasion
7 to take dinner with General HATA in Tsukiji, Tokyo,
8 and at that time I asked General HATA why he took such
9 an attitude which was really against his ideas and his
10 nature and he said he was obliged to do so by the in-
11 fluence of MUTO." And on the next page: "Had War
12 Minister TOJO not accepted the views of the Military
13 Affairs Bureau, he would have met the same fate as War
14 Minister HATA."

16 We fail to see how this testimony can "show the
17 close and intimate relationship" between HATA and MUTO.
18 And Mr. Sutton again harps on the fact that HATA was
19 not "necessarily required to follow the suggestion"
20 made by INUMA when he recommended MUTO to HATA in the
21 approved Japanese army procedure in his capacity as
22 Chief of the Personnel Affairs Bureau (D.D.16). But
23 again, as before, nowhere does Mr. Sutton suggest
24 anything else that HATA should have done, nor does he
25 suggest that MUTO had done anything up to this time
to give notice to HATA that he, HATA, shouldn't accept

INUMA's recommendation of MUTO.

1 We next learn that the China Affairs Board,
2 of which HATA was Vice President, outlined a program
3 for the new regime in China (D.D.18). The summation
4 goes at length into this program although no connection
5 is established with HATA, outside of his being a vice
6 president of this board. He is not shown to have
7 been present at the meeting, nor to have had any con-
8 nection with the making of the program.
9

10 Let us look at the record to see how HATA
11 became Vice President of this board. Brigadier Nolan,
12 in his complete exposition of the Japanese government
13 set up at the opening of this trial, referring to this
14 board, stated (p. 543): ". . . and the President is
15 the Prime Minister ex officio. The Ministers of Fi-
16 nance, Foreign Affairs, War and Navy serve as vice
17 presidents. The Director General is the actual admin-
18 istrator. There are fifty officers and sixty clerks
19 to compose the staffs. . ." HATA being a vice president
20 of the China Affairs Board, therefore, is a mere for-
21 mality, one of the offices he automatically assumes
22 upon becoming Minister of War in the Cabinet. And, we
23 repeat, there is no evidence HATA attended this meeting.
24

25 The summation also seeks to show that HATA
"sponsored" the Weng Ching-wei Government in China.

1 Part Two of the prosecution's summation on the conspir-
2 acy gives a complete exposition of the actions taken
3 by and with Wang Ching-wei, beginning in the "spring
4 of 1938" in the formation of a new regime in China
5 (pp. E-71 to E-80). Five of the accused before this
6 Tribunal are named in these pages and the part they
7 played in the setting up of this regime is gone into
8 at length. HATA is not one of them; he is not even
9 mentioned. In June 1939 when Wang was in Tokyo con-
10 ferring about the setting up of the new government and
11 completing the plans for it, he consulted with many of
12 the Japanese leaders, including two of the accused.
13 HATA was not among them (E-77). The summation states
14 (E-78): "On March 30, 1940, the new government under
15 Wang Ching-wei was formally established at Nanking."
16 The plans and preparations for this government had been
17 completed in June 1939 when Wang had come to Tokyo
18 for his series of conferences, and only the formalities
19 took place on March 30, 1940.

21 Continuing with the summation, we see a head-
22 ing (D.D.23): "HATA favors advance into French Indo-
23 China." The only evidence which it is claimed con-
24 nects HATA with such a matter is an excerpt from the
25 KIDO Diary wherein KIDO records he had been told that
the military ministers at a Four Ministers' Conference

1 had favored that a request be submitted to the French
2 "regarding the pro-Chiang actions and, if refused by
3 the French, that force be employed." We have already
4 gone into this exhibit in the early part of our summa-
5 tion, and at this time we respectfully point out to
6 the Tribunal that HATA is not named in Count 23, which
7 refers to the initiation of a war against the Republic
8 of France, nor in Count 33, which refers to the waging
9 of a war against the Republic of France.

10 Although we have gone to great lengths on the
11 YONAI Cabinet and HATA's position with reference to
12 the Tripartite Pact, we cannot help but make additional
13 appropriate comment thereon after having read the prosec-
14 ution's version in the summation. Mr. Sutton, conscious
15 of the lack of value of the newspaper item he quoted
16 on cross-examination of YONAI, tries to bolster his case
17 by headlining it as (D.L.35) "The Leading Article on
18 Fall of YONAI Cabinet" and then, still not convinced
19 himself that it necessarily is so, he also calls it
20 "The Authoritative Article on Liquidation of YONAI-
21 AKITA Diplomatic Policy." Mr. Sutton has too soon
22 forgotten, or chooses deliberately to forget, that when
23 the defense sought to introduce similar articles, both
24 the Tribunal and the prosecution characterized them as
25 "propaganda" and "hand-outs". It is also worthy of

1 note that nowhere, even in his summation, can Mr. Sut-
2 ton find any corroborating evidence to support the
3 allegedly authoritative newspaper article's informa-
4 tion that HATA sent YONAI a note asking "How about
5 deciding to have the Cabinet resign?"

6 Mr. Sutton lends a most comical note to his
7 summation when, after quoting and reviewing the news-
8 paper article in detail, his next headline after the
9 one already quoted, is (D.D.37) "KIDO's Account of the
10 Fall of the YONAI Cabinet" and this account, which
11 is quoted in toto in the earlier part of our summation,
12 nowhere says anything about HATA's having sent YONAI
13 a note about the resignation of the Cabinet. Apparently
14 even Mr. Sutton does not believe his "authoritative"
15 and "leading" newspaper article, for KIDO's Diary,
16 quoting as we have already pointed out, Vice Minister
17 of War ANAMI, Chief Cabinet Secretary ISHIWADA, and
18 Premier YONAI himself, gives an entirely different
19 version from that of the newspaper article.
20

21 Mr. Sutton states (D.D.38): "The Three
22 Chiefs' Conference of which HATA was a member, re-
23 fused to recommend a successor." Although he quotes
24 parts of the KIDO Diary, Mr. Sutton very conveniently
25 fails to quote the sentence which reads as follows
(p. 6,247): "As a result of the conference of the

1 Three Chiefs, it was said that although the selection
2 of a successor was not being refused, it was diffi-
3 cult to choose one and no forecast was possible."

4 Mr. Sutton scoffs at the defense evidence of-
5 fered by TANAKA and others that HATA was forced to re-
6 sign. It was Mr. Sutton who made the successful ob-
7 jections to our introduction of a letter by Chief of
8 Staff His Imperial Highness KANIN ordering HATA to
9 resign. Both TANAKA and SAWADA stated that the Chief
10 of Staff, although apparently the equal of the War
11 Minister, was in reality his superior. Complete con-
12 firmation for this fact comes from a source Mr. Sutton
13 dare not impech -- the prosecution itself. We quote
14 from the prosecution's general summation on the Lia-
15 bility of the Defendants where, speaking of the Cabinet
16 and the Supreme Command, the prosecution says (p. K-15):
17 "This was due to the fact that the chiefs of staff of
18 army and navy, contrary to the practice in all other
19 countries, were not subordinates of the Ministers of
20 War and Navy, but were, in theory, independent and
21 co-equal of those ministers. In fact, they might well
22 be said to have been the superior of those ministers."

23 By agreement with Mr. Sutton we strike the
24 next three lines, one sentence, which Mr. Sutton be-
25 lieves refers to the letter. Although we disagree with

1 him we will strike it in order to have no dispute.

2 THE PRESIDENT: Mr. Sutton, if you feel any
3 resentment at the references to you, we will be quite
4 prepared to hear you. I have heard crown prosecutors
5 very severely handled in my own court, and at times
6 it has been necessary to rebuke counsel.

7 I feel sure, Mr. Lazarus, that if you were
8 wholly responsible for this summation it would not be
9 in such terms. But there is no reason why you should
10 not give effect to your own views in that matter.
11 On one occasion you even challenged Mr. Sutton's good
12 faith. It amounts to that.

13 MR. LAZARUS: Mr. President, you apparently
14 are under a misapprehension. There is nothing personal
15 in this. Mr. Sutton and I are good friends on the
16 outside. I call on Mr. Sutton many times, and he calls
17 on me. I am merely pointing out mistakes in his summa-
18 tion. I say nothing about his personal good faith and
19 I don't intend to. In fact, you will notice in a
20 couple of places, Mr. President, I skipped words
21 around Mr. Sutton's name which I thought on reading at
22 this time were not proper.

23
24 From now on I will substitute the words "the
25 summation states" instead of "Mr. Sutton states" then,
Mr. President.

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1 MR. SUTTON: May it please the Tribunal,
2 had not this summation been presented before a tribunal
3 composed of judges, men of long experience in the law
4 and in the trial of cases, we would very early have
5 objected to the frequent references to the personali-
6 ties involved in the case. Under the circumstances,
7 we thought we could well leave the matter to the judg-
8 ment of the Members of the Tribunal.

9 THE PRESIDENT: The Judges can be trusted to
10 estimate the value of these references to you at their
11 true worth, but what about the world?

12 MR. LAZARUS: All I am doing is quoting the
13 record, Mr. President, and I will substitute the words
14 "the summation" for "Mr. Sutton." There is nothing
15 personal in this, sir.

16 THE PRESIDENT: Sometime ago in the course of
17 reading this summation you did suggest that Mr. Sutton
18 was knowingly pursuing the wrong course. I cannot just
19 put my hand on the passage, but I can find it before
20 you can conclude and refer to it then.

21 MR. LAZARUS: Well, I move to strike it, Mr.
22 President, if you feel that I did that. I never intend-
23 ed to do that, I assure this Court and I assure
24 Mr. Sutton.
25

THE PRESIDENT: One of my colleagues complains

1 that you are discourteous to Mr. Sutton. You certainly
2 were discourteous to Mr. Tavenner and Mr. Keenan.

3 MR. LAZARUS: I don't see how, Mr. President.
4 I am just quoting those gentlemen from the record.

5 THE PRESIDENT: I refer to your statement as
6 to his conical note.

7 MR. LAZARUS: Well, we move to strike it,
8 Mr. President.

9 THE PRESIDENT: Personally, I would not have
10 taken exception to that.

11 MR. LAZARUS: If there is any question about
12 my being insulting to Mr. Sutton, I consent to having
13 everything stricken. And while we are on the question
14 of insulting people, Mr. President, I still recall that
15 I was accused of treason to my country by this Tribunal
16 while I wore the uniform of my country, and although I
17 have never received an apology, and although I have
18 said nothing about it, I feel you didn't mean it, and
19 you must accept my explanation that I didn't mean any
20 disrespect either to Mr. Sutton or to Mr. Tavenner or
21 to Mr. Keenan. You must note that I am quoting the
22 record; whatever they said is down here. I am quoting
23 it.
24

25 THE PRESIDENT: I said that you addressed
Mr. Keenan and Mr. Tavenner as "Keenan" and "Tavenner,"

1 and that was improper; and so it is improper. I said
2 nothing more than that for myself.

3 MR. LAZARUS: But I quoted that, Mr. President,
4 and I thought it was an inadvertence.

5 THE PRESIDENT: I now refer to page 172,
6 line 5, and also to 173, line 5. On page 172, line 5,
7 you say: "Mr. Sutton, conscious of the lack of value
8 of the newspaper he quoted on cross-examination, tries
9 to bolster his case by headlining it," et cetera.

10 At page 173, line 5, the expression, "even
11 Sutton," appears, but you did not say "even Sutton."

12 MR. LAZARUS: I corrected it to Mr. Sutton.
13 I did read "Mr. Sutton." You can check the record.

14 THE PRESIDENT: You are quite right; you did.

15 MR. LAZARUS: Do you agree that I said
16 "Mr. Sutton" or shall we check the record, Mr. Presi-
17 dent? I know that I had it written in here and that
18 I said it.

19 THE PRESIDENT: Another colleague refers to
20 page 175, line 10, where you suggested lack of
21 honesty. The sum total of all this is that there is
22 a general feeling that the tenor of this summation is
23 offensive.
24

25 MR. LAZARUS: We will strike the words then.
I have acted generally in two dozen courts

1 martial while this trial was going on, and never
2 once have I been accused of being offensive, and I
3 have used this type of language. I don't say they are
4 dishonest, and I didn't say it. I say they cannot
5 honestly contend that. Now, that is not imputing
6 dishonesty to them.

7 THE PRESIDENT: We judge you, Mr. Lazarus,
8 and your co-counsel, by what you say here and by what
9 you do here -- not by your appearances elsewhere or
10 the uniform you wear.

11 MR. LAZARUS: Well, the United States Marines,
12 whose uniform I was wearing at the time, did not think
13 I was acting in a treasonous manner.

14 This is final argument. We are allowed to
15 argue on what the prosecution has said and done, and
16 if we think they cannot honestly make such a conten-
17 tion we have a right to say they cannot honestly make
18 such a contention. That doesn't accuse them of being
19 dishonest. If the word is objectionable I will strike
20 it out.

21 THE PRESIDENT: How you can accuse a person
22 of lacking honesty without accusing him of being dis-
23 honest I am unable to discover; nor can any of my
24 colleagues understand you.

25 MR. LAZARUS: I mean they honestly can't

1 contend what they do contend in their summation. Now,
2 if the word is objectionable to you I will strike it
3 out. I think I got it from a quotation or misquotation
4 of the evidence, and if I misused it I will mark it out.
5 If the prosecution or the Court do not want it, the word
6 "honestly" will go out, and I will say, "how can they
7 contend," and I don't see how it will be offensive.

8 THE PRESIDENT: Reasonably contend.

9 We will adjourn for fifteen minutes.

10 (Whereupon, at 1045, a recess was
11 taken until 1100, after which the proceed-
12 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: I believe we were in the middle
5 of page 174.

6 The prosecution says (p. K-15): "This was
7 due to the fact that the chiefs of staff of army and
8 navy, contrary to the practice in all other countries,
9 were not subordinates of the Ministers of War and Navy,
10 but were, in theory, independent of and co-equal to
11 those Ministers. In fact, they might well be said to
12 have been the superior of those Ministers."

13 We skip the next three lines. We have agreed
14 with Mr. Sutton that that is the reference to the letter.

15 Mr. Horwitz, in his explanation of the function
16 of the various branches of the government, states as
17 follows (p. 666): "Second, by compelling the War or
18 Navy Ministers, subject to the orders of the high com-
19 mand because of their active service status, to resign,
20 either the army or the navy could bring about the resig-
21 nation of the Cabinet." This, then, from the prosecution
22 itself should end once and for all any contentions
23 on the part of Mr. Sutton that the War Minister could
24 not be forced to resign from the YONAI Cabinet.
25

1 And finally, how can the summation, in view of
2 all the evidence, especially the prosecution evidence
3 from KIDO's Diary, which we have reviewed for the Tri-
4 bunal in this summation, as well as the evidence offered
5 by SAWADA, YONAI, ARITA, and the prosecution's star
6 witness, TANAKA, reasonably contend that HATA wrecked
7 the YONAI Cabinet? The perfect answer on this point is
8 given to this Tribunal by the chief prosecutor himself.
9 He positively clears HATA and sustains completely our
10 contention that the General Staff ordered and caused
11 HATA to resign when, in cross-examining the accused
12 TOJO, Mr. Keenan asked this revealing and definitive
13 question (p. 36,581):

14 "Q Won't you be candid enough, won't you
15 admit, Mr. TOJO, that it was the General Staff of the
16 Army that caused the fall of the YONAI Cabinet? Won't
17 you admit that fact no matter when you learned it or
18 where you learned it or how?"

19 The summation next takes up the fact that
20 General TOJO succeeded General HATA as War Minister.
21 Although TOJO himself, under Mr. Keenan's cross-
22 examination, stated that the prosecution's translation
23 of this particular excerpt was incorrect, and Captain
24 Kraft, at the request of the President of this Tribunal,
25 verified the correction, and then Mr. Keenan accepted

1 the corrected translation of the word "naiso" from
2 "secretly" to "informal recommendation," the summation
3 persists in quoting the incorrect translation of the
4 excerpt from KIDO's Diary and in using the word
5 "secretly" in its statements in the summation with
6 reference to HATA's visit to the Emperor about TOJO.
7 Having covered this subject in full in the earlier part
8 of our summation, we will not go into it further other
9 than to point out that the summation has chosen again
10 to omit a vital part which would give the true picture
11 instead of a distorted one to the Tribunal. Here
12 defense document 42 in quoting the KIDO Diary excerpt,
13 it skips the part which states that HATA went to the
14 Emperor and recommended TOJO "and Tomoyuki YAMASHITA
15 for Inspector General of the Air Force." The summation
16 makes it appear from his piecemeal quotations that HATA
17 went to the Emperor to recommend only TOJO. The Tri-
18 bunal will recall that when we quoted the full excerpt
19 earlier in our summation, we strongly pointed out to the
20 Tribunal that HATA did not go only for TOJO, but also
21 for the next Inspector General of the Air Force, and
22 that this was no conspiratorial act for the sake of
23 TOJO alone, but an act done in a regular course of
24 Japanese army procedure to recommend a new War Minister
25 and a new Inspector General of the Air Force. That it

1 was proper for HATA to recommend to the Emperor at
2 this time the Inspector-General of Military Aviation
3 is shown to us by Brigadier Nolan who, in explaining
4 the various branches of the government at the
5 beginning of this trial, stated (p. 590): "The
6 Inspector-General of Military Aviation is directly
7 responsible to the Emperor..." This, then, shows
8 that HATA was only exercising his duties, as outgoing
9 War Minister, by informally recommending to the
10 Emperor the succeeding War Minister and the succeeding
11 Inspector-General of Military Aviation, both of whom
12 are directly responsible to the Emperor.

13 For the final time, the summation refers
14 with awe to HATA's position as Military Councillor.
15 This time it headlines it (Defense document 42)
16 "HATA Accepts Appointment Under New Cabinet" and follows
17 it with "HATA stayed with the military clique. On
18 the very day that the Second KONOYE Cabinet, with
19 TOJO as War Minister, was formed, HATA accepted
20 appointment in that Cabinet as Military Councillor.
21 We respectfully submit that the entire question as to
22 whether he had long efficiently worked to force the
23 resignation of the entire YONAI Cabinet and bring into
24 being a strong militaristic cabinet is set at rest
25 by the fact that HATA immediately accepted appointment

1 under this Cabinet. HATA and the leaders of the new
2 cabinet were co-conspirators". Only our respect for
3 this Tribunal keeps us from applying the proper words
4 to these inferences and misinterpretations of the
5 record.

6 THE PRESIDENT: Well, that is offensive,
7 of course.

8 MR. LAZARUS: I beg your pardon, Mr. President?

9 THE PRESIDENT: That is offensive. What
10 epithets you have in mind do not concern us. You
11 did refer to epithets you have in mind, whatever they
12 are.

13 MR. LAZARUS: I didn't read that part, Mr.
14 President.

15 THE PRESIDENT: You did.

16 MR. LAZARUS: No, sir; I said "proper words",
17 Mr. President.

18 THE PRESIDENT: You may not have indulged in
19 abuse.

20 MR. LAZARUS: Well, Mr. President, in my
21 country if we catch some one misinterpreting the evidence,
22 we do explain it thoroughly to the court or make fun
23 or really point out the improper conduct of the other
24 side, and there is nothing wrong in that.

25 THE PRESIDENT: We will let you point out

1 fully what the misinterpretations are; do not
2 misapprehend me. But we do not interest ourselves
3 in our mental reservations about them.

4 MR. LAZARUS: In the first place --

5 THE PRESIDENT: The whole purpose of this
6 summation seems to be to antagonize the Tribunal.--

7 MR. LAZARUS: That isn't so, Mr. President,
8 and you know it.

9 THE PRESIDENT: -- and to misrepresent the
10 Tribunal if the Tribunal resents what is said. It is
11 pure propaganda.

12 MR. LAZARUS: No, it isn't. There is an
13 excellent case here for the accused HATA. It is being
14 presented strongly and I think that is wherein stems
15 the objection to our reading this summation.

16 THE PRESIDENT: You will withdraw those words
17 and you will apologize. Otherwise, we will not hear
18 you further.

19 MR. LAZARUS: If I said anything that offended
20 the Tribunal I do withdraw them and I do apologize. I
21 told you before I never intended to insult either the
22 Tribunal or the prosecution.

23 THE PRESIDENT: We accept your withdrawal
24 and apology, so proceed to read your summation.

25 MR. LAZARUS: As long as we have reached this

1 stage, Mr. President, I want to ask if you intend to
2 apologize to me for having accused me of treason to
3 my country while I was here, or to withdraw the
4 remarks, if you please.

5 THE PRESIDENT: No such remarks were ever
6 made by me. I have nothing to withdraw and nothing
7 to apologize for. You are making a misstatement --
8 not a misrepresentation but a misstatement -- which
9 was wholly without foundation and that is part of the
10 propoganda. If I had accused you of that, you had
11 your remedy and you would have exercised it and it
12 would have been very effective. But you know I never
13 made any such accusation against you or against any
14 other American counsel.

15 For nearly two years I have been meeting you
16 and other American counsel and no such suggestions as
17 you have just made has ever been uttered. You do
18 yourself little credit if you say here, as you do,
19 that I offered you that insult and you did not resent
20 it; during two years.

21 MR. LAZARUS: You are a judge, Mr. President.
22 There is nothing I could say or do to you that would
23 remedy it. But I say once this trial is over I shall
24 seek remedy.
25

I shall continue reading.

1 It is pellucid, we respectfully submit, that
2 only when the letter is addressed to the Vice-Chief of
3 the General Staff, is it the expression of HATA. There
4 is nothing of any nature here to show that a telegram
5 addressed to the Vice-Minister of War expressed the
6 opinion of HATA. Further, all the evidence in the trial
7 shows HATA always dealt with the General Staff, not the
8 War Ministry, with reference to the Doolittle fliers.
9 There is nothing in the evidence that even suggests that
10 HATA was responsible for this telegram.

11 And to show that HATA was not responsible for
12 this telegram, we must ask why it wasn't put to MIYANO
13 when MIYANO testified about HATA's letter by his Chief
14 of Staff to the Vice-Chief of the General Staff in Tokyo?
15 MIYANO would have told him only communications to the
16 Vice-Chief of the General Staff are expressions of HATA,
17 not communications to the Vice-Minister of War. The
18 latter are expressions of the Chief of Staff himself.
19 And why wasn't the telegram put to TANAKA when TANAKA
20 was testifying about HATA's letter by his Chief of Staff
21 to the Vice-Chief of the General Staff? MIYANO and
22 TANAKA were both testifying about the Doolittle trial
23 and the question would have been proper. It is known
24 that TANAKA would have told him the telegram to KIMURA
25 was not HATA's, but the Chief of Staff's. The telegram

was introduced against KIMURA in his individual defense
1 phase, not against HATA. That shows the prosecution
2 knew it was not HATA's document.

3 Why, if the summation thought it was HATA's
4 document, wasn't it introduced in rebuttal against HATA?
5 Because it was known that we could clearly answer it in
6 surrebuttal. The summation is the only place where it
7 is tried to connect HATA with this telegram.

8 Let us examine the telegram itself. After it
9 was read into the record, we have this immediately
10 following (p. 31,822):

11 "THE PRESIDENT: That is a very poor translation
12 isn't it?
13

14 "COLONEL MORNAME: That is probably so, your
15 Honor. I don't wish to mislead the Tribunal as to this
16 document. This document was part of the I.P.S. files,
17 translation was made, and the document can no longer be
18 found -- the original document."

19 We need say nothing more on the quality of this
20 document.

21 After the telegram, which had been sent to the
22 War Ministry, the summation contains this statement
23 (D.D. 54): "It is reasonable to conclude, we respect-
24 fully submit, that it was the result of this telegram
25 from HATA's Chief of Staff that the discussions arose in

the War Ministry and General Staff concerning which

1 TANAKA testified as to whether these fliers should be
2 treated as prisoners of war or tried under some new law
3 to be promulgated." The evidence was that the War
4 Ministry, despite the alleged telegram, held to the view
5 that the fliers be held as prisoners of war and not be
6 executed. Mr. Keenan understood that, for in cross-
7 examining TANAKA, Mr. Keenan asked (p. 29,046):
8

9 "A And, if I understand your affidavit or
10 your statement correctly, that was the view held by the
11 War Ministry, to hold these men as prisoners and not to
12 execute them?"

13 If the War Ministry had determined to execute
14 the fliers, the summation then could say the telegram
15 was an influencing factor. But that the telegram came
16 too late to have caused the discussions on the treatment
17 of the fliers is shown by this part of Mr. Keenan's
18 cross-examination of TANAKA (p. 29,053):

19 "Q When did this sharp difference of opinion
20 as to the treatment of the fliers occur with relation
21 to the Doolittle raid itself?
22

23 "A This violent opposition arose immediately
24 upon receipt of word from China that the fliers who had
25 bombed Tokyo had been caught there.

"Q That was the next day after the raid?

"A Yes."

1 And the summation states (D.D. 53) that the
2 telegram was sent "within three days after the Doolittle
3 fliers were captured. . ." How, then, can it be said
4 that, "It is reasonable to conclude, we respectfully
5 submit, that it was the result of this telegram from
6 HATA's Chief of Staff that the discussions arose in the
7 War Ministry and General Staff concerning which TANAKA
8 testified . . .?"
9

10 Although Mr. Comyns Carr, in his answer --
11 Does the Tribunal wish to omit the previous
12 sentence as I did?

13 THE PRESIDENT: Well, you are making necessary
14 changes.

15 MR. LAZARUS: I am willing to; I will only be
16 too glad to.

17 THE PRESIDENT: You can put your case fully.

18 MR. LAZARUS: Although Mr. Comyns Carr, in his
19 answer to our motion for dismissal, did not even refer
20 to it because obviously there is no evidence against
21 HATA involved, the summation nevertheless drags up the
22 OGIYA case again (D.D. 60). This concerns the trial and
23 execution of two American fliers in Japan on 18 July 1945.
24

25 OGIYA's affidavit was read during the prose-
cution's atrocities phase (p. 14,221). The prosecution

1 did not even think the portions about HATA important
2 enough to read but did so when the Tribunal called its
3 attention to it several documents later (p. 14,227).

4 Page 2 of OGIYA's affidavit (exhibit 1925-A)
5 shows Major General OTAHARA, head of the Judicial
6 Department of the Central and 15th Area Army Headquarters
7 investigated the case of the two American fliers. Before
8 the trial, OTAHARA was transferred and Lieutenant OGIYA
9 acted as public procurator in the trial in place of Major
10 General OTAHARA (page 3 of exhibit 1925-A). Commander
11 Cole read the portion pointed out by the Tribunal
12 (p. 14,227):

13 "After Major General OTAHARA completed his in-
14 vestigation, he wrote an opinion based on his investi-
15 gati and forwarded this opinion to Lieutenant-General
16 Pitaro UCHIYAMA, Commander of the Central Army Head-
17 quarters, to get an approval of the death sentence. Then
18 after obtaining the approval of General UCHIYAMA, Major
19 General OTAHARA took his opinion to General HATA who was
20 in command of the Second General Army, and also got his
21 approval of the death penalty. Lastly, Major General
22 OTAHARA took the opinion to the War Ministry in Tokyo
23 and the death penalty was also approved."

24
25 At the request of the defense, OGIYA was brought
here five days later and cross-examined by the defense.

OGIYA testified as follows (p. 14,617):

1 "A The obtaining of the approval of the death
2 penalty may be a mistake in translation. In the light
3 of his office, it is not imaginable that a Procurator
4 could receive an approval of the death penalty. It would
5 be possible, however, for a Procurator to obtain approval
6 of the method of execution. It is possible for the
7 Procurator to obtain approval for a demand for a death
8 penalty."
9

10 On cross-examination by counsel for HATA,
11 CGIYA testified (p. 14,620):

12 "Q Mr. Witness, you stated that you heard
13 that the approval of General HATA was requested. Do you
14 have any more concrete confirmation than that to give
15 this Tribunal?

16 "A The matter to which I have testified did
17 not come to my knowledge directly. They are based on
18 what I heard from my Chief, OTAHARA."

19 And further (p. 14,621):

20 "Q Then, the only information you have as to
21 General HATA's knowledge of this case is the fact that
22 General OTAHARA told you that General HATA had approved?
23

24 "A Yes."

25 And continuing:

"Q Now, this trial was held under the

1 jurisdiction of the 15th Area Army under the command of
2 Lieutenant General OCHIYAMA, isn't that so?

3 "A Yes."

4 And later on the same page:

5 "Q After the decision was rendered condemning
6 the American fliers to death, was the approval of General
7 HATA for the execution of the sentence sought?

8 "A No.

9 "Q Was the approval of anyone sought before
10 the sentence was executed?

11 "A Commander OCHIYAMA.

12 "Q And that was because OCHIYAMA was Command-
13 ing General of the 15th Area Army which had complete
14 charge and sole charge of this trial, isn't that so?

15 "A Yes.

16 "Q Did you ever see any documents relating
17 to this trial that had been signed by General HATA
18 personally?

19 "A No, I have not.

20 "Q Then, I ask again for the last time, as
21 far as you know, the only connection that General HATA
22 had with this trial is General OTAHARA's statement to
23 you that he, OTAHARA, had gotten General HATA's approval
24 for requesting the death sentence at the trial?
25

"A Yes."

1 And, if the Tribunal please, the prosecution
2 did not bring in Major General OTAHARA, although he and
3 OCHIYAMA, like OGIYA who was produced for cross-
4 examination at our request, were in Sugamo together. If,
5 indeed, OTAHARA had gotten HATA's approval, it would have
6 been a simple matter to have brought him in so to state.
7 OGIYA, who was prosecutor at the trial, and who presented
8 the evidence, stated on cross-examination as just quoted
9 that he never saw any documents relating to that trial
10 signed by HATA.

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1 Although he can point to not one scintilla
2 of evidence showing that HATA was in any wise respon-
3 sible either because he ordered, authorized, or per-
4 mitted his troops to commit atrocities, or because
5 he failed to take proper precautions to prevent the
6 occurrence of atrocities, or because, when information
7 about atrocities came to him he failed to take proper
8 action, or because the alleged atrocities were of such
9 a magnitude that he must have known of them, the sum-
10 mation nevertheless seeks to lay full responsibility
11 for all atrocities in China, both against civilians
12 and prisoners of war, at HATA's door. It ignores
13 completely any require to show that responsibility
14 lay with HATA. It ignores the system of the army chain
15 of command and the responsibility within that command
16 for military discipline and the conduct of the troops.
17 It ignores all the evidence, both prosecution and
18 defense, showing where the responsibility for atroci-
19 ties should be placed. It ignores the fact that Mr.
20 Justice Mansfield in his opening statements on the
21 prosecution's atrocities phase, in which he names
22 many of the accused, does not name HATA. It ignores
23 the fact that nowhere has there been introduced a
24 scrap of evidence connecting HATA with prisoners of
25 war or even that he was responsible for prisoners of war.

1 Let us examine the record, from the prose-
2 cution's own evidence, as to who should be respon-
3 sible for such matters. The prosecution assumes
4 (D.D. 50) that because "HATA was in command of the
5 Expeditionary Forces in China from March 1941 to
6 November 1944, and that the responsibility of HATA for
7 those acts of the soldiers under his command is clear
8 and inescapable" that that makes it so. We have al-
9 ready thoroughly set out for the Tribunal the actions
10 taken by HATA to prevent the occurrence of atrocities
11 and the testimony of the officers and men under HATA
12 as to the non-occurrence of atrocities.

13 HATA was Commander of the Expeditionary Force
14 in China: he was not in command of troops. His posi-
15 tion was identical with that held by General Eisenhower
16 in the European Theatre. As the evidence of YOKOYAMA,
17 SAWADA, and others already quoted shows, high-ranking
18 Japanese generals were in command of the various
19 armies and area armies in China. Theirs was the re-
20 sponsibility for the maintenance of discipline by
21 their troops and the care of prisoners of war in the
22 camps in the areas under their control. That in each
23 instance it is the army commander who is responsible
24 for the discipline of his troops, we will prove through
25 unimpeachable sources, namely, those of the prosecu-

tion itself.

1 We begin with the prosecution's prisoner of
2 war summation (p. J-8) where, speaking of prosecu-
3 tion rebuttal documents on prisoner of war camps, it
4 is stated: "They show that the Red Cross visit to
5 the camp was deferred from April to August 1942 at the
6 urgent request of the Chief of Staff of the 13th
7 Army..." Let us examine the exhibits referred to.
8 On inspection of the record, these documents are seen
9 to be a series of telegrams; the first (38,153): "is
10 a telegram dated 10 April 1942 from POW Information
11 Bureau to Chief of Staff, 13th Army." Colonel Mornene
12 read into the record the following two pertinent para-
13 graphs:
14

15 "Although permission had been requested some
16 time ago by the Swiss Consul-General in Shanghai and
17 the representatives of the International Red Cross Com-
18 mittee to inspect the Shanghai P.O. Camps and
19 report on its condition to the nations concerned
20 after having personal talks with the prisoners of war,
21 in consideration of the fact that the preparation and
22 equipment of the camp had not been completed at that
23 time so soon after the fighting, we have kept it
24 postponed until this day.
25

"It is our presumption that you have com-

1 pleted arrangements by now and so in accordance with
2 international provisions intend to permit the tour of
3 inspection of our Shanghai P. O. W. Camp in the near
4 future. Please let me know your opinion on the
5 matter as soon as possible."

6 The second document (exhibit 3843-A) "is a
7 reply to the previous exhibit" and is from "adjutant
8 of the 13th Army" to "Chief of the P.O. W. Information
9 Bureau." It states (38,155):

10 "As to the inspection of the camp by the
11 Swiss Consul-General in Shanghai and the representa-
12 tives of the International Red Cross Committee, I am
13 of the opinion that it should be postponed for a while
14 because the arrangement of the camps, such as the dis-
15 pensary, sick-room, kitchen, bath and other places
16 concerned, are not yet completed, and also the fact
17 that a part of the prisoner of war room is being
18 renovated. Besides these things, the present mental
19 attitude of the prisoners is not reasonable."

20 The next document (Ex. 3843 B, p. 38,155)
21 "from P.O. W. Information Bureau to the Chief of Staff
22 of the 13th Army and is in reply to the previous ex-
23 hibit." It states (p. 38,156):

24 "The various installations of the Shanghai
25 prisoner of war camp should be improved as quickly

1 as possible so that there may be no trouble on the
2 occasion of the inspection to be made by the foreigners.

3 "When you consider the proper time for
4 inspection has been reached, please let me know
5 immediately."

6 My friend has asked me to read the first
7 paragraph of this document, and I have no objection
8 if the Tribunal has none:

9 "The inspection of the Hong Kong prisoner
10 of war camp by the delegates of the International Red
11 Cross Committee is to be permitted early in May."

12 This, then, from the prosecution's own evi-
13 dence introduced in rebuttal by Colonel Mornane shows
14 that the POW Information Bureau in Tokyo dealt direct-
15 ly with the 13th Army in Shanghai. FATA is nowhere
16 mentioned nor his headquarters. It is each army that
17 is responsible for military discipline and for prisoners
18 of war, not the China Expeditionary Force Headquarters
19 of FATA. The Tribunal will note that nowhere through-
20 out the entire trial has there been one scintilla of
21 evidence, direct or indirect, that FATA or his head-
22 quarters were involved in the question of atrocities
23 against civilians or inhabitants of prisoner of war
24 camps. The various armies had total and complete
25 jurisdiction and responsibility for these matters.

1 HATA in his headquarters could not be all over the
2 vast face of China at once and, very properly, authori-
3 ty and responsibility for maintenance of discipline,
4 prevention of atrocities and the treatment of prisoners
5 of war were placed with those in command of the troops
6 in the field, the commanders of the several armies.

7 We continue with the prosecution's summation
8 (p. J-33): "At the War Ministry, any protests re-
9 ceived were discussed at the bi-weekly conference
10 between the Minister, Vice-Minister, and the Bureau
11 Chiefs. After this, they were forwarded by the P.O.W.
12 Information Bureau to the Army Commander of the area
13 in which the grounds of the protest had arisen, and
14 also to the Chief of POW camps in that area." Here
15 again we see that it is the "Army Commander" who is
16 given the responsibility by the Japanese government
17 for the maintenance of discipline and the proper
18 treatment of the prisoners of war. And all this, if
19 the Tribunal please, is from the prosecution summation
20 on atrocities and prisoners of war, and every state-
21 ment just quoted is well-documented with citations
22 from the record of this trial.

23 And we have one final authority to offer the
24 Tribunal to support our contention that the army
25 heads and not the Commander of the China Expeditionary

1 Force were responsible for the maintenance of dis-
2 cipline and proper treatment of prisoners of war.

3 This, too, like our previous quotations on the sub-
4 ject, was offered by the prosecution itself, and we
5 respectfully submit is absolutely conclusive on the
6 point and proves our contention beyond any shadow of
7 doubt. This was offered to the Tribunal by Brigadier
8 Nolan when he was explaining the functions of the
9 various branches of the government. He states in
10 speaking "about the administration of prisoners of
11 war" (594): "By Imperial Ordinance, exhibit 92 in the
12 case, number 1182 of 23 December 1941, prisoner of war
13 camps were placed under the jurisdiction of the Min-
14 ister of War. The Ordinance provided that they were
15 to be administered by a Commander of an army or a
16 Commander of a garrison under the general supervision
17 of the Minister of War." This, then, shows that it
18 was the army head and the garrison commander who were
19 responsible in these matters, and the example of that
20 is to be found in the three prosecution exhibits which
21 we have quoted in full. These exhibits are telegrams
22 going from the POW Information Bureau in Tokyo to the
23 13th Army in Shanghai and vice versa, and concern
24 matters relating to POW camps and their inhabitants.

25 With this conclusive evidence produced by the prosecu-

tion itself and absolutely absolving HATA of any
1 responsibility for the alleged atrocities, we conclude
2 our answer to the atrocities phase in the prosecution's
3 summation against HATA.

4 At the end of the summation, still writing
5 of "HATA who went secretly to the Emperor and recommend-
6 ed TOJO", although, as we have pointed out, the cor-
7 rection had been made in the record and even accepted
8 by Mr. Keenan in his cross-examination of TOJO, by
9 taking fractions of sentences from KIDO's testimony,
10 it tries to make out an evil thing in TOJO's recommend-
11 ation of HATA as a possible candidate for Prime
12 Minister to succeed KOISO when KOISO's Cabinet resigned
13 in April 1944 (D.D. 61), It does not mention that
14 TOJO had stated that "a General or Admiral in active
15 service" be next Premier because of the critical
16 Japanese position in the war at that time, nor that
17 TOJO didn't mean that the Premier should be decided
18 at that meeting. To set the record straight, we will
19 quote in full the three speeches by TOJO, at this
20 conference, that are cited by the summation.

21 In the first passage cited, here is the com-
22 plete quote by KIDO of TOJO's statement about HATA
23 (p. 31,121): "He contended that Marshal HATA be chosen
24 as succeeding Prime Minister on the ground that the
25

1 wer situation had entered upon a state in which a
2 decisive battle would have to be fought in the Japan-
3 ese mainland and therefore that the next Prime Min-
4 ister must be a General or Admiral in active service."

5 The summation very conveniently omits this
6 quote, but we think it should not be omitted (31,131):

7 "TOJO: I do not mean to say that the Premier
8 should be decided at this meeting. I meant that it
9 should be submitted as a material to His Majesty so
10 that he can prepare himself."

11 The next quote is the one from which frac-
12 tions of sentences had also been taken (33,139):

13 "TOJO: The attitude of Admiral SUZUKI is
14 truly fine. The developments of the war are beyond
15 conjecture. The enemy is getting impatient. He will
16 try a bold strategy. He is likely to attempt landing
17 somewhere on Japan proper. Home defense, then, will
18 become the vital point. The government and the com-
19 mand must be fused into one. Here the army must be
20 considered as the principal body. In this sense, we
21 must have a soldier on the active list. Historical
22 instances have been cited, but Japan is different from
23 the countries of Europe. In their case, the command
24 got into the government. The character of our command
25 is naturally different. From this standpoint, I be-

1 believe Marshal HATA is suitable."

2 And the last citation (31,141):

3 "TOJO: At the present when our land is about
4 to become a battlefield, we must take special care or
5 else there is a fear that the army may take an aloof
6 standing. If the army takes an aloof standing, the
7 Cabinet will collapse."

8 TOJO, then, is only stating that, because of
9 Japan's precarious military position, "the next Prime
10 Minister must be a General or Admiral in active ser-
11 vice." And he names HATA as a candidate for the posi-
12 tion, although, as he says, "I do not mean to say that
13 the Premier should be decided at this meeting." From
14 this how can the summation state to this Tribunal
15 (D.D. 61) that TOJO "threatened to again use the army
16 influence to wreck the Cabinet if HATA were not chosen..."
17 If there were any kind of a case against HATA -- strike
18 the rest of that sentence. This closes our review of
19 the prosecution's summation against HATA.

20
21 Although counts 37 and 38 were dropped by
22 the prosecution in its general summation, we wish to
23 refer to them for a moment to show that HATA, who was
24 War Minister until 16 July 1940, is not considered
25 by the prosecution as having "worked on the plans and
preparations for an aggressive war" while he was War

1 Minister. Counts 37 and 38, which alleged that be-
2 tween the first of June 1940 and 8 December 1941
3 various named accused as leaders, organizers, in-
4 stigators, or accomplices conspired to initiate unlaw-
5 ful hostilities against the countries therein named,
6 do not name HATA, although he was War Minister for one
7 and one-half months during the period covered by these
8 counts. The prosecution realized then, as it must
9 realize now, that HATA was not working on plans and
10 preparations for war while he was War Minister. If
11 he had, he would have been named in these counts, for
12 he held office during that time.

13 HATA, if the Tribunal please, was, throughout
14 the period covered by the indictment, a soldier first,
15 last, and always. He never belonged to a single
16 association, political party, group, society, brother-
17 hood, or clique. He never made speeches, wrote pam-
18 phlets or articles, molded public opinion, formulated
19 public policy, or engaged in politics. The only time
20 that he is officially quoted on any matter whatsoever
21 was when he, as War Minister in 1944, answered ques-
22 tions on two occasions in the Diet () stated un-
23 equivocably that he supported the YONAI Government's
24 policy. That is the only time HATA has ever been
25 quoted officially in any document offered to this

Tribunal by either side.

1 The only time he was in a policy-making
2 position was as War Minister in the short-lived,
3 conservative ABE and YONAI Cabinets. He was never a
4 member or a leader of the "young officer" group. He
5 never appeared in any theatre outside of China and,
6 then not as a commander of troops but as Commanding
7 General, first, of the Central China Expeditionary
8 Forces, and the second time, for almost four full
9 years from 1 March 1941 to November 1944 as Commanding
10 General of the China Expeditionary Forces.

11 It is a most amazing thing that in twenty
12 months of trial the prosecution has introduced not one
13 witness against HATA himself, but has attempted to
14 build up its entire case on excerpts from KIDO's Diary,
15 documents referring to actions by others, and by hear-
16 say evidence.

17 The absence of any direct evidence as to non-
18 military activities by HATA proves that he lived, as
19 TANAKA told us, by the rule he set down for others
20 while he was War Minister -- "no politics." His con-
21 duct has at all times been above reproach and there
22 is not one scintilla of evidence that he was ever
23 consciously, or unconsciously, a member of any con-
24 spiracy or series of conspiracies. He was, we repeat,
25

1 at all times a professional soldier serving his
2 country, in the highest sense of the word.

3 In this lengthy trial the prosecution has
4 produced documents about the Emperor and HATA's asso-
5 ciation with him and has sought to draw inferences
6 and conclusions therefrom. Since it used the Emperor's
7 name so often, why did not the prosecution have the
8 requisite respect for this Tribunal to produce the
9 Emperor as a witness, rather than resort to third and
10 fourth hand hearsay for their evidence against HATA?
11 It will forever be recorded as a source of wonder
12 indeed that in the greatest trial in history the
13 prosecution did not have the resolution to produce
14 the one man who could have told us so much so succinct-
15 ly.
16

17 HATA was, we respectfully submit, a member of
18 the honorable profession of arms. He devoted his
19 life to the service of his country. When war, which
20 was not of his making, came, he fought without ques-
21 tion.

22 HATA is not guilty of the charges made against
23 him before this Tribunal.

24 THE PRESIDENT: Major Blakeney.

25 MR. BLAKENEY: Shall I proceed, your Honor?

THE PRESIDENT: Yes. Your general summation

1 was not read because. I understand, there was delay
2 in typing Japanese copies.

3 MR. BLAKENEY: Yes, that is correct.

4 THE PRESIDENT: We are ready to hear you,
5 Major Blakeney.

6 MR. BLAKENEY: THE JAPANESE-AMERICAN
7 NEGOTIATIONS. INTRODUCTORY.

8 1. The next branch of the summation will
9 treat of a subject which has loomed large throughout
10 these proceedings, and may justly be regarded as the
11 heart of the case: the Japanese-American negotiations
12 of 1941. The title is a misnomer (but serves because
13 of its familiarity): the Japanese-American negotiations
14 were but an aspect of the relations of Japan with the
15 United States, the British Empire, the Netherlands,
16 France -- those Western Powers whose colonial or commer-
17 cial interests in the Pacific threw them into contact
18 with Japan -- and China, her great neighbor in Asia
19 with whom she had fallen to quarreling. It was a time
20 when relations were bad; Europe was at war, and the
21 possibility of war in the Pacific was recognized to be
22 not immeasurably remote. These negotiations, in which
23 America acted for the other Powers, served to bring
24 into focus the questions which had resulted in those
25 conditions and to make them explicit; and plainly

1 would lead either to their settlement in peace or to
2 a final failure to solve them except by resort to
3 arms.

4 The subject is thus far broader than its
5 title indicates. While ostensibly discussing the
6 negotiations which took place in Washington from
7 April to November of 1941, we shall in reality be
8 searching for the reasons and causes of the Pacific
9 war. Nor can the subject be considered in vacuo;
10 the Tribunal will wish to and indeed must view the
11 coming of war between Japan and the other Powers
12 against the backdrop of the times: Japan entangled
13 in an endless war. America and her allies arming in
14 fear of the European aggressor; mutual suspicion in
15 the Pacific, leading in its turn to more arming;
16 economic warfare, whether cause or effect, of the
17 other Powers against Japan. While these things cannot
18 be forgot in studying the Japanese-American negotia-
19 tions, they are being argued elsewhere. Considering
20 them as a whole, the Tribunal will find its answer
21 to the question, "Was the Pacific war an act of aggres-
22 sion by Japan such that her leaders now here in the
23 dock should be punished as criminals for bringing it
24 about? Or did they make efforts to prevent it, by
25 sincere search for a peaceful solution?" That is the

1 significance of the Japanese-American negotiations.

2 2. The prosecution have provided the Tribunal,
3 in their extended summation¹ on the subject, with an
4 elaborate, comprehensive, and able survey of the
5 United States' position in the negotiations. I have
6 advisedly said "a survey of the United States'
7 position"; for while the argument purports to trace
8 the negotiations in detail from their beginning,
9 making some reference to the successive proposals and
10 counterproposals and the conversations, and to draw
11 therefrom the conclusions presented, those conclu-
12 sions are for the most part not founded upon nor
13 stated in terms of the evidence so reviewed, but are
14 copied verbatim from one or more of the official
15 United States Government publications of its views.²
16 Those publications naturally and properly state the
17 national policy of the United States; but they have
18 nothing to do with this criminal trial. On the other
19

20 1. Summation, Sections G-53 - G-152 (Tr. 39582-702).

21 2. Much of the identical language of the summation
22 will be found in some or all of the following
23 works: Department of State, Peace and War;
24 United States Foreign Policy, 1931-1941 (1943);
25 Department of State, Papers Relating to the
Foreign Relations of the United States--Japan:
1931-1941 (1943); Statement of Cordell Hull, in
Seventy-Ninth Congress, First Session, Hearings
before the Joint Committee on the Investigation
of the Pearl Harbor Attack (1946), ii, 406-45;
affidavit of Joseph W. Ballantine, Exhibit 1245
(Tr. 10712-849, taken largely from the foregoing).

1 hand, we cannot avoid noticing a tendency of the
2 prosecution to take umbrage when any of these
3 defendants ventures in any degree to criticize this
4 United States policy; the summation is sprinkled
5 extraordinarily thick with such epithets as "absurd,"³
6 "brazen,"⁴ "vituperative,"⁵ "insolent."⁶ Why should
7 American policy be so sacred? Is it only because
8 it has prevailed by force of arms? Is it necessary
9 to assume even for purposes of prosecution that
10 every difference of opinion with us must be a dis-
11 honest one? It is not to be expected that a Tribunal
12 composed of representatives of the Powers victorious
13 in a late war should by its judgment condemn the
14 policies of those nations or any of them. Neverthe-
15 less, a little judicial experience or practice at the
16 bar -- not to say intelligent observation of the
17 affairs of everyday life -- suffices to cure one of
18 any callow belief that in human differences one side
19 is normally white and the other black. It is rarely
20 indeed that the question is not rather of more or less
21 discriminable shades of gray. Nor, if we may credit

23 3. Summation, Section G-159 (Tr. 39710).

24 4. Id., Section 30 (Tr. 38975), Section G-128-A
(Tr. 39673), Section G-153 (Tr. 39703),
Section G-158 (Tr. 39710).

25 5. Id., Section 6 (Tr. 38952).

6. Ibid., Section 38 (Tr. 38981).

1 the teaching of history, does the case differ with
2 those aggregations of humans constituting nations:
3 if anything, while nations may be rather more prone
4 to be dogmatic about white and black, the complexities
5 of international intercourse render them even the
6 less likely to be correct..

7 3. Another tendency which one has been
8 able to note during these proceedings is that of
9 insinuating that defense counsel, when their duty
10 has required them to suggest that the conduct of
11 their own country was something less than impeccable,
12 have been guilty of gratuitous lapses from good taste,
13 if not of something unpatriotic or, it may be,
14 bordering on the treasonable. To such suggestions
15 a lawyer is and ever has been contemptuously imper-
16 vious; however ungrateful the duty, it is there to
17 be done. But what the authors of such suggestions
18 overlook is that we are here concerned with no
19 questions of the policies of any nation; Japan is
20 not here on trial, despite an occasional suggestion
21 by the prosecution that these proceedings were
22 intended as "more than a mere trial of individuals,"⁷
23 nor do this Tribunal's duties require it to bestow
24 any accolade upon the conduct or motives of the
25 7. Summation, Section 15 (Tr. 38959).

1 United States of America or any other nation, to
2 protect anyone or to defend any policy. The dis-
3 tinction is plain between political decision,
4 arrived at on the basis of national policy, and
5 judicial decision, rendered on the basis of law and
6 the evidence. This Tribunal was not established
7 as an instrument for the better enforcement of the
8 national policies of its constituent nations, or any
9 of them, or of what the judges believe those policies
10 to be. Whatever the incidental effects of its judg-
11 ment, its function is not the making of history, but
12 the trying of twenty-odd men on specific charges of
13 alleged wrongdoing. To administer justice according
14 to law -- the law, before which all men are equal --
15 such is its sworn duty and its avowed purpose.

16 4. In this study of the diplomatic
17 negotiations of 1941, I shall be considering the
18 official acts of two nations, my own and Japan.. It
19 need not even be said that in doing so I shall be
20 expressing, as best I am able, the views of Japanese,
21 of these defendants; but I make it my purpose to
22 analyze those acts, as they are disclosed by the
23 evidence, with the utmost of detachment, and dis-
24 passionately as I am able. The prosecution have
25 treated the long negotiations for the settlement of

1 United States of America or any other nation, to
2 protect anyone or to defend any policy. The dis-
3 tinction is plain between political decision,
4 arrived at on the basis of national policy, and
5 judicial decision, rendered on the basis of law and
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7 as an instrument for the better enforcement of the
8 national policies of its constituent nations, or any
9 of them, or of what the judges believe those policies
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12 the trying of twenty-odd men on specific charges of
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17 negotiations of 1941, I shall be considering the
18 official acts of two nations, my own and Japan.. It
19 need not even be said that in doing so I shall be
20 expressing, as best I am able, the views of Japanese,
21 of these defendants; but I make it my purpose to
22 analyze those acts, as they are disclosed by the
23 evidence, with the utmost of detachment, and dis-
24 passionately as I am able. The prosecution have
25 treated the long negotiations for the settlement of

1 Pacific problems not only as being on the Japanese
2 side conducted in bad faith, but as themselves con-
3 stituting a conspiracy.⁸ It may be permissible to
4 retain doubts that a man becomes a conspirator even
5 by being sufficiently often stigmatized as such by a
6 prosecutor; but at any rate, the charge of conspiracy
7 in the Japanese-American negotiations is a two-edged
8 sword. If Japan's officials were conspiring by
9 insincerely negotiating to gain time for war prepara-
10 tions, to prepare for defense, so by their own showing
11 were the American officials.⁹ Feeling such an
12 a priori approach to be valueless, we shall treat
13 the matter otherwise: examine the evidence, and let
14 it lead us to a posteriori conclusions.

15 5. This evidence falls into a like pattern,
16 prosecution and defense. Documents, in considerable
17 numbers, selected chiefly from the official records
18 of the two Governments -- proposals, explanatory
19 statements and memoranda of conversations, and Japa-
20 nese telegraphic correspondence (either in the
21 original form, or as intercepted and deciphered by
22 the United States authorities) between the Foreign
23 Ministry in Tokyo and its Embassy in Washington,
24

25 8. Summation, Section G-51 (Tr. 39579).

9. Ex. 2840 (Tr. 26362-63);
Testimony of Ballantine (Tr. 11009-10).

1 where the negotiations took place. And, on each
2 side, as witness, one who participated in the
3 negotiations; intended by his testimony to bring
4 into perspective the whole of the subject as seen
5 from the respective vantage points of Washington and
6 Tokyo -- Joseph W. Ballantine and YAMAMOTO, Kumaichi,
7 roughly counterparts in the positions which they
8 occupied in the two foreign countries.

9 THE PRESIDENT: We will adjourn now until
10 half-past one.

11 (Whereupon, at 1200, a recess
12 was taken.)
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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: 6. It is unnecessary and would be a trespass upon the Tribunal's patience to trace again in detail the entire course of the negotiations, as has been done by the prosecution in summation. We may accept their general outline of the chronology and proceedings -- of course rejecting many of their interpretations and inferences. I propose rather to consider the matter under, broad, general heads. The argument of the prosecution proceeds upon the theory that Japan, conducting the negotiations with no intention that they should arrive at fulfillment through any agreement but openly in the spirit of making no concessions, demanding the opponents' surrender under the threat of war, thereby demonstrated her insincerity in negotiating at all -- thus inferentially establishing the conspiracy. They take their stand squarely on the ground of "the shallowness and even falsity of the Japanese defense that they had made concession after concession and

1 that the United States had remained adamant. The
2 truth is that from the beginning to the end there
3 was never a change in the policy of Japan. . . There
4 was never a basic alteration or concession made in a
5 single term."¹⁰

6 On this ground we shall meet them.

7 7. The negotiations commenced on 9 April
8 with a privately-prepared draft of a proposed under-
9 standing to embrace and solve all the outstanding
10 points of contention between the two nations. Prose-
11 cution witness Ballantine for some reason chose to make
12 an issue of just how and by whom the negotiations were
13 commenced: he is most -- one might even say suspicious-
14 ly -- eager to insist at every opportunity that the
15 initiative was taken by Japan, that "Japan asked for
16 an agreement", the United States did not. This informa-
17 tion was volunteered by him on at least ten separate
18 occasions in the course of his testimony.¹¹ His con-
19 tention is worth examining briefly, for while strictly
20 it is perhaps immaterial upon whose initiative nego-
21 tiations commenced, the answer will help to explain
22 the frame of mind of this witness and of the State
23 Department which he represented in the negotiations.
24
25

(10. Summation, S-30. T. 38975)

(11. T. 10868, 10,869, 10,887, 10,912, 10929, 11003,
11019, 11027, 11159)

1 First, however, a word concerning the testimony of
2 Bellantine in general. His so-called affidavit¹² is
3 a curious document. This witness was given an extra-
4 ordinary introduction to the Tribunal as an "eminently
5 qualified" expert on the international relations of
6 the Far East in general, and of those of the United
7 States of America, Japan and China in particular,
8 wherefore his testimony would "include his own con-
9 clusions and those of his associates in the State
10 Department", and "language designed to not alone clar-
11 ify but to characterize."¹³ It fully measured up to
12 this description; it is a mass of conclusions, irrele-
13 vancies and opinions, all so inextricably interwoven
14 with a modicum of factual matter that if they were
15 removed the remaining ten percent or less would be
16 unintelligible.¹⁴ Nor are the opinions even the witness'
17 own;¹⁵ he admitted that some 65 percent of the document
18 was not his expression, but was taken verbatim from
19 various Department of State publications (careful
20 (12. Ex. 1245, T. 10714)
21 (13. Statement of prosecutor, T. 10710)
22 (14. The Tribunal over objection received the entire
23 document in evidence, stating that all conclusions and
24 opinions contained in it would be disregarded (T.10716,
25 10850). Since the entire document went into the record,
however, it should in fairness be noted that reference
to any standard work of history will cast grave doubts
on many of the witness' dogmatic statements concerning
Japanese actions and motives in the period from "Japan's
emergence as a modern state" to 1928 (T.10719-30, 10742-
43), as well as those with which it is the duty of this
Tribunal to pass upon.)
(15. T. 10852)

1 search shows that substantially more of it was so
2 compiled).¹⁶ His testimony given under cross-examination
3 can fairly be characterized, as will be shown by exam-
4 ples in the course of this discussion, as evasive and
5 unsatisfactory. He was, at all events, utterly sure
6 of the two points: that it was at Japan's initiative
7 that the negotiations were opened, and that the Japan-
8 ese position in the course of them was "successively
9 narrowed",¹⁷ each proposal being "narrower" than the
10 last one, or "on its face extreme."¹⁸

11 8. On 14 February 1941 Secretary Hull accom-
12 panied Ambassador NOMURA for his first call upon
13 President Roosevelt. The President on that occasion
14 gave a rather broad hint to the Ambassador to the ef-
15 fect that it would be desirable to undertake discus-
16 sions in the effort to improve Japanese-American rela-
17 tions:

18 "He then said that in view of all these
19 serious conditions which are becoming increasingly
20 worse and which seriously call for attention, it oc-
21 curred to him that the Japanese Ambassador might find
22 it advisable and agreeable as he, the President, does,
23 to sit down with the Secretary of State and other
24

25 (16. The documents in question are listed in Note 2,

supra.)
(17. T. 10890)

(18. T. 10811)

1 State Department officials and review and re-examine
2 the important phases of the relations between the two
3 countries, at least during the past four or five years,
4 and frankly discuss all of their phases and ascertain
5 just when and how points of divergence developed and
6 their effects, and bring the whole situation in these
7 respects up to date in order to see if our relations
8 could not be improved. The President said there is
9 plenty of room in the Pacific area for everybody, and
10 he repeated this statement with emphasis."¹⁹

11 Following this, Ambassador NOMURA called on
12 Secretary Hull on 8 March, at which time the Secretary
13 again urged the Ambassador to undertake conversations
14 for the adjustment of relations.

15 "On two or three occasions I inquired of him
16 whether it was still agreeable to pursue the President's
17 suggestion of talking over and discussing the past
18 relations between our two governments and the questions
19 that have arisen which call for settlement by mutual
20 agreement."²⁰

21 Ambassador NOMURA was not notably enthusiastic

22 "He indicated his favorable disposition in

23 (19. Memorandum by Secretary of State (These are cited
24 hereinafter as "Memorandum"), Ex. 1043, T.9799-
25 800).

(20. Memorandum, Ex. 1056, T. 25677)

1 regard to the matter, but not in any specific way as
 2 to time or as to officials with whom he might talk."²¹

3 Again on 14 March the Ambassador called on the
 4 President, and again the Secretary in the presence of
 5 the President further pressed him to "take the inia-
 6 tive" in negotiations: the Secretary "made it clear
 7 that Japan, having departed from the course that both
 8 nations have been pursuing, the initiative and respon-
 9 sibility are hers to suggest what, how and when, she
 10 is willing, as a preliminary step, to undertake serious
 11 discussions . . ."²²

12 9. Meanwhile, a draft of a proposed agreement
 13 which should settle the outstanding problems between
 14 the two nations was being worked on by a number of
 15 Japanese and American private citizens. Some of the
 16 details of the drafting of this document are obscure,
 17 but it seems that the draft proposal so prepared was²³
 18 brought to the notice of the Secretary of State by the
 19 Postmaster General of the United States (who, as is²⁴
 20 well known, is in the usual course the President's
 21 confidante in the Cabinet); Ambassador NOMURA certainly
 22 had some knowledge of it and took some part in its²⁵
 23

24 (21. Id. T. 25677-78)

(22. Memorandum, Ex. 2868, T. 25680)

25 (23. Ex. 1059, T. 9851)

(24. Testimony of Ballantine, T. 10856)

(25. Ex. 1060, T. 9863)

1 ²⁶
2 preparation, and according to his report at least
3 one section was inserted in it at the desire of the
4 President ("the highest American authority"²⁷), and
5 others at American insistance.²⁸ Secretary Hull, at
6 all events, certainly proposed that negotiations com-
7 mence on the basis of it; he requested the Ambassador
8 to call on him on 14 April, and "Near the close of
9 the conversation I suggested that, having cleared up
10 these preliminary phases for which I sent for him,
11 we could, if desired on his part, proceed at any time
12 with certain preliminary discussions with a view to
13 ascertaining whether there is a basis for negotia-
14 tions . . ."²⁹

15 Whatever may be the details concerning the
16 origin of this first draft of an agreement, it was
17 understood by the authorities in Tokyo to represent
18 an American proposal presented in pursuance of an
19 American suggestion to negotiate for an agreement; so
20 much is abundantly clear from the explanation of the
21 then Premier, Prince KONOYE, of the understanding upon
22 which it was received by the Japanese Government.³⁰ Am-
23 bassador NOMURA asked, and as a result of long cabinet

24 (26. Ex. 2870, T. 25683-4)

25 (27. Telegram from NOMURA to KONOYE, Ex. 2871, T.25686)

 (28. Id. T. 25689-91)

 (29. Memorandum, Ex. 2869, T. 25681)

 (30. Ex. 2866, T. 25694-700)

31

discussions was granted, authority to open negotiations; but he was instructed to negotiate on the basis not of the supposed American draft proposal but of a counter-proposal, differing in many respects, which was sent to him and by him presented to Secretary Hull on 12 May.³²

THE SUBJECT-MATTER OF THE NEGOTIATIONS

10. The prosecution's contention we have seen to be that from beginning to end of the 1941 negotiations Japan made no concessions from her original position, such changes as did occur being in the direction of "narrowing" her proposals.³³ In order to test this conclusion, it is necessary to have clearly in mind Japan's original position in the negotiations, as contained in this draft proposal. A reading of the entire document is of course indispensable to an understanding of the subject; but it may be worthwhile at this stage to summarize its principal points. Omitting the preliminary matters and the statements of principle and policy -- none of which ever proved a stumbling-block in the negotiations -- we find the first substantive question discussed to be that of "the attitude of both governments toward the European war"³⁴ Japan

(31. Ibid)

(32. Ex. 1070, T. 9891)

(33. Summation § 30, T. 38975 and Section "G", passim.)

(34. T. 9895-96)

1 maintained that its alliance with the Axis Powers was
2 defensive, and designed to prevent nations not then
3 directly affected by the European war from engaging in
4 it, and that "its obligations of military assistance
5 under the Tripartite Pact between Japan, Germany and
6 Italy" were to be applied in accordance with Article
7 III thereof. The United States was reciprocally to
8 affirm that its attitude toward the European war was
9 to be "directed by no such aggressive measures as to
10 assist any one nation against another." Under the next
11 heading, that of "the relations of both nations toward
12 the China Affair,"³⁵ the United States was to acknowledge
13 the "KONOYE Three Principles" and the elaboration there-
14 of in the treaty with the Nanking Government and in the
15 Japan-Manchukuo-China joint declaration, and was forth-
16 with to request the Chiang Kai-shek regime to negotiate
17 peace with Japan. Nextly, in connection with "commerce
18 between both nations",³⁶ upon conclusion of an under-
19 standing the United States and Japan were to assure
20 to each other mutual supply of available and required
21 commodities, and to restore normal trade relations as
22 theretofore under the Treaty of Commerce and Navigation.
23 "Economic activity in the Southwest Pacific area"³⁷ called

24
25 (35. T. 9896-7)

(36. T. 9897)

(37. T. 9897)

1 for American cooperation to be given in the production
2 and procurement of natural resources required by Japan,
3 presumably in the "Southwestern Pacific area." The
4 last division of the subject-matter is "political
5 stabilization in the Pacific area",³⁸ containing two
6 topics: that the United States and Japan should joint-
7 ly guarantee the independence of the Philippine Islands
8 on the condition of their permanent neutralization
9 and of Japanese subjects not being there subjected
10 to any discriminatory treatment; and that "amicable
11 consideration" should be given to the question of
12 Japanese immigration to the United States on the basis
13 of equality with other nationals. The annex to this
14 counter-proposal consists, in the form of an "oral ex-
15 planation", of elaboration on certain of the points
16 above referred to. The "KONOYE Principles" are set
17 out, and their implications there detailed; in addi-
18 tion, explanations were given for various deletions
19 from and alterations in the text of the original draft
20 proposal of 16 April.

21 11. This proposal was on 16 May discussed at
22 some length between Secretary Hull and Ambassador
23 NOMURA. The Secretary at that time handed to the
24 Ambassador some "draft suggestions" relating to the
25 (38. T. 9798)

Japanese proposal, the chief points of which were
1 these:³⁹ The American views of the extent of the right
2 of self-defence were explained by excerpts from an ad-
3 dress of the Secretary of State on 24 April 1941; the
4 section on "the attitudes of the United States and of
5 Japan toward the European war" was redrafted; the sec-
6 tion on "China Affairs" was redrafted with considerable
7 alterations of the details of the proposed settlement
8 with China; and the section on "economic activities
9 in the Southwestern Pacific area" was to some extent
10 amended. After some further discussions the United
11 States presented on 31 May its draft counter-proposal⁴⁰
12 and oral statements explanatory thereof.⁴¹ With the
13 presentation of this counter-proposal the differences
14 between the parties were precisely defined.
15

16 12. A word is necessary concerning the meth-
17 ods of the State Department in these negotiations.
18 "Negotiations", it is self-evident -- the discussion
19 of a matter with a view to some settlement or compro-
20 mise⁴² -- implies the existence of an issue, as to which
21 the parties respectively advance, accept, qualify or
22 refuse successive offers or proposals. Negotiations
23

24 (39. Ex. 1071, T. 9904-8)

(40. Ex. 1078, T. 9937-46)

(41. Exs. 1079, T. 9947-59, and 1080, T. 9960)

25 (42. Oxford English Dictionary (1933), vii, 81.

cannot be in the abstract -- that is the field of de-
1 bate, of disputation -- but must be concerned with con-
2 crete questions. This is platitudinous, it seems not
3 worth arguing or even stating; nor would it be, but
4 for a certain disinclination which we find manifested
5 here to discuss those concrete details. The witness
6 Ballantine (whose voice, be it remembered, is that of
7 the Department of State of the United States) has un-
8 dertaken to say that for the Japanese Government to
9 speak of having made concessions in these negotiations
10 is "a monstrous distortion of the facts."⁴³ It is
11 natural to assume that a witness and a State Department
12 making such a charge are prepared to point to the evi-
13 dence supporting it; in justification of such a con-
14 clusion relating to negotiations, one would expect to
15 be given the specific instances proving that no con-
16 cession was made on some or all of the concrete de-
17 tails of the negotiations. Those instances are not
18 to be discovered in this record.
19
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(43. T. 10846)

1 The State Department certainly did recognize
2 the existence in the Japanese-American negotiations of
3 such specific problems -- in its ultimatum of 26
4 November 1941 it stated that the negotiations had
5 been carried on "for the purpose of arriving at a
6 settlement if possible of questions relating to the
7 entire Pacific area"⁴⁴ -- but the cross-examiner's
8 attempt to expose the basis of Mr. Ballantine's
9 conclusions (which are the State Department's) by
10 finding examples of Japanese recalcitrance on specific
11 questions met with defeat. The witness declined to
12 discuss these details which were negotiated over for
13 half a year, repeatedly taking refuge in such evasions
14 as "We didn't reach a point where all the other things
15 were so clear that we would have to reach a decision
16 on this one remaining question"⁴⁵ ; "you couldn't take
17 any one point at a time; you had to consider the whole
18 situation as a whole"⁴⁶ ; "I don't think that they
19 (we) attached too much importance to any single point
20 because we were so far apart on many of those questions
21 as a whole"⁴⁷ ; "we didn't consider each of these small
22 points individually. We considered the proposition as
23

24 44. Ex. 1245-I (Tr. at 10,816).

25 45. Tr. 10,889.

46. Tr. 10,895.

47. Tr. 10,897.

1 a whole"⁴⁸ ; "So far as I know, none of us reached any
2 conclusion in regard to this point by itself, or any
3 other point by itself."⁴⁹ What is this mysterious
4 "whole", which is not equal to the sum of the parts?
5 Let us say that (as we shall see presently to have
6 been the fact) there were three issues for negotiation.
7 Of point "A" the witness says "Oh! they may have made
8 some concession on that, but they narrowed their
9 position as a whole." Inquiry concerning "B" and "C"
10 elicits the same response. It is pertinent to inquire,
11 on what does the witness base the second clause of his
12 reply?

13 An alleged Japanese refusal to make conces-
14 sions from the position with which she started negoti-
15 ations being made the cornerstone upon which the
16 prosecution would erect a structure of conspiracy,
17 chicanery and duplicity, we must investigate the
18 charge closely. The prosecution having elected to
19 rest such a large part of their case against these
20 defendants -- so far as concerns responsibility for
21 the Pacific War -- upon what is contended to be Japanese
22 insincerity in the Japanese-American negotiations,
23 insincerity which is said to give the lie to those

24 48. Tr. 10,927.

25 49. Tr. 10,928.

1 defendants' affirmation that concurrent military
2 preparations and the negotiations themselves were not
3 carried on with aggressive intent, we shall have at
4 any risk of tedium to undertake a minute study of the
5 Japanese-American negotiations. What the witness
6 Ballantine would not admit, the documentary evidence
7 introduced by prosecution and defense places, it is
8 submitted, beyond doubt: that from the Japanese side
9 came concession after concession in the endeavor to
10 find a common ground with the increasingly retro-
11 gressive American position, in order to avert a war
12 which would be as ruinous as unnecessary.

13 13. In order to make this demonstration, a
14 chronological treatment of the negotiations as a
15 whole would, it is felt, be of little value. Instead,
16 I shall attempt to isolate the points of difference
17 which provided the subject-matter of the negotiations --
18 the concrete questions in which there was or was not
19 concession -- tracing the history of them one by one
20 in order to see whether the contentions of the prosecu-
21 tion (which are those of the Department of State) have
22 validity. Having done this, I shall treat of a number
23 of other related questions in the endeavor to assist
24 the Tribunal to a complete view of the subject.
25

In stating the points in contention in the

1 Japanese-American negotiations we may disregard var-
2 ious points of phraseology in the preamble and minor matters
3 in the text of the draft proposals; the significant
4 issues framed by the end of May were understood by the
5 Japanese⁵⁰, and are confirmed by the Americans⁵¹, to
6 have been three: 1) the attitudes of the respective
7 governments toward the European war -- the Tripartite
8 Pact question; 2) the question of Chinese-Japanese
9 relations and the settlement of the China Affair; and
10 3) the question of the economic activities of the two
11 nations in the Pacific area, especially with reference
12 to the principle of non-discrimination in international
13 commercial intercourse⁵². At least one other of
14 importance arose before the end, that of Indo-China.

15 THE TRIPARTITE PACT QUESTION

16
17 14. The issue between the two nations con-
18 cerning their respective attitudes toward the European
19 War was ostensibly that of the interpretation which
20 Japan was making and would make of Article III of the
21 Tripartite Pact, providing in part that "If and when
22 any one of the signatories be attacked by any third
23 power not presently engaged in the present European
24 war, or the China Incident, the other two shall aid her

25 50. Exs. 2,895 (Tr. 25,801) and 2,903 (Tr. 25,831).

51. Testimony of Ballantine (Tr. 10,861-62).

52. *Idem.* (Tr. 10,861-62).

in any way political, economic or military." ⁵³

1
2 America was then rapidly and irrevocably
3 becoming involved in the European War, which involve-
4 ment was regarded and was justified by her as being
5 a legitimate exercise of the right of self-defense.
6 The further involvement which was foreseen would in-
7 evitably end in an openly avowed state of war between
8 America and Germany -- brought about, in the American
9 view, as a result of America's action in self-defense.
10 The obstacle to Japanese-American understanding was
11 the American requirement that Japan should so inter-
12 pret her obligation to the Tripartite Alliance as not
13 to compel her going to war in aid of Germany in such
14 an event; the difficulty was that Japan, while readily
15 agreeing that an action of legitimate self-defense
16 by America would not call into operation the provisions
17 of the Tripartite Pact for aid to Germany, was not
18 willing to give advance agreement that any action what-
19 soever which America might choose to label self-
20 defense was in fact legitimately so. The American
21 interpretation of the right of self-defense was in
22 the Japanese view far too broad, amounting to an un-
23 justified extension of the right. As the witness
24 Ballentine put it, "There was no difference on the
25 53. Ex. 43, (Tr. 513).

1 point that each nation must be the judge of what
2 should constitute its own self-defense. What the
3 Japanese representatives said was that they could not,
4 in an agreement, give us a blank check and agree not
5 to attack us on our concept of self-defense."⁵⁴

6 The giving of this "blank check" was exactly
7 what was demanded by the American position. Although
8 Ballantine undertook to say that Japan refused to give
9 any commitment even after the United States had ex-
10 plained its attitude on the question of self-defense⁵⁵,
11 the record shows that the only explanation of the Amer-
12 ican attitude ever given was in effect that America
13 would do what she pleased in the name of self-defense.
14 The representatives of the Department of State re-
15 ferred the Japanese ambassadors, for a definition of
16 the American attitude, to public speeches made by the
17 President and the Secretary of State. The Secretary's
18 definition was his statement in an address of 24 April
19 1941 that "the safety of this hemisphere and of this
20 country calls for resistance wherever resistance will
21 be most effective."⁵⁶ The President, speaking a month
22 later (27 May), had filled in the details to make
23 this quite explicit:
24

25 54. Tr. 10,864-64.

55. Tr. 10,868-69.

56. Ex. 2874 (Tr. at 25,719).

1 "In September 1940 an agreement was completed
2 with Great Britain for the trade of 50 destroyers for
3 eight important off-shore bases.

4 "I have said on many occasions that the
5 United States is mustering its men and its resources
6 only for the purpose of defense -- only to repel
7 attack. I repeat that statement now. But we must be
8 realistic when we use the word 'attack'; we have to
9 relate it to the lightning speed of modern warfare.

10

11 "First, we shall actively resist wherever
12 necessary and with all our resources, every attempt
13 by Hitler to extend his Nazi domination to the Western
14 Hemisphere, or to threaten it. We shall actively
15 resist his every attempt to gain control of the seas.
16 We insist upon the vital importance of keeping Hitlerism
17 away from any point in the world which could be used
18 and would be used as a base of attack against the
19 Americas.

20

21 "We in the Americas will decide for ourselves
22 whether and when and where our American interests are
23 attacked or our security threatened.

24 "We are placing our armed forces in strategic
25 military position.

1 "We will not hesitate to use our armed forces
2 to repel attack."⁵⁷

3 America would resist wherever necessary and
4 whenever necessary, deciding the necessity for itself,
5 taking any action at any point in the world which it
6 considered to threaten American interests or security.

7 Similar explanations were made by the Secre-
8 tary and the President to the Ambassadors on various
9 occasions.

10 15. It is submitted that this clearly does
11 amount to an American demand that it be given carte
12 blanche to determine the demands of its self-defense.
13 Whether the Tripartite Pact was good or evil, no
14 nation could without complete loss of international
15 faith give the assurance demanded by the United States,
16 that the Pact's obligation of aid would not be called
17 into operation despite the taking by America of
18 action at "any point in the world" where she might
19 "decide for herself" that her security was threatened.
20 Accepting the American contention, the United States
21 might have "placed her armed forces in strategic
22 military position" on the Russo-German border, she
23 might have massed them in Sweden or in Spain, she
24 might have stationed her fleet in the North Sea or
25 57. Ex. 2,876 (Tr. 25,723-24).

1 the Baltic or based her air force in the British
2 Isles -- or might have done all these things. Had
3 she done so, of course she would have been attacked
4 by Germany; yet adopting the United States' definition
5 of the scope of the right of self-defense, Japan would
6 have been justified in declining to carry out her
7 obligations under the Tripartite Pact. Would she
8 not have been delinquent in refusing her aid in such
9 circumstances? (It will be remembered that, as we
10 have seen elsewhere ⁵⁸, the Japanese view of the extent
11 of the right of self-defense as it then existed under
12 international law was correct, and the United States
13 had, even before the commencement of these negotiations,
14 entered into a state of war in fact against Germany.)

15 16. America, it need hardly be remarked, had
16 never liked the Tripartite Pact; yet it would have
17 been a paradox had the United States, a nation always
18 foremost among the family of nations in upholding the
19 sanctity of treaties, made the demand of Japan that
20 she should deny the obligatory character of the Pact.
21 Actually, the United States had always been specific
22 that she did not insist on Japan's denouncing the Tri-
23 partite Pact alliance, but throughout was requiring
24 of Japan only the making of such an interpretation
25

58. Defense Summation, Section "E", "On Some
Questions of International Law", §14, *supra*. (Tr. 42431)

1 of its obligation as would permit America to rest
2 easy concerning her claims of the right to act in
3 self-defense. The Japanese representatives had, more-
4 over, early made it clear that Japan could not at that
5 time repudiate the Tripartite Pact outright⁵⁹; there
6 was therefore no question of that on either side.
7 Japan's attempt throughout the negotiations was to
8 find an interpretation of the alliance obligation
9 which would be satisfactory to the United States
10 and yet would not expose her to the charge of bad
11 faith and disregard for her treaty obligations. The
12 history of this attempt can be traced in the succes-
13 sive interpretations offered by the Japanese. In the
14 first Japanese counter-proposal of 12 May it was
15 stated as follows:

16 "The Government of Japan maintains that its
17 alliance with the Axis Powers was, and is, defensive
18 and designed to prevent the nations which are not at
19 present directly affected by the European War from
20 engaging in it .

21
22 "The Government of Japan maintains that its
23 obligations of military assistance under the Tripartite
24 Pact between Japan, Germany and Italy will be applied
25 in accordance with the stipulation of Article 3 of
59. Memorandum, Ex, 2,881 (Tr. at 25,741).

1 the said Pact."⁶⁰

2 Against this, the American 21 June clause was:

3 "The Government of Japan maintains that the
4 purpose of the Tripartite Pact was, and is, defensive
5 and is designed to contribute to the prevention of an
6 unprovoked extension of the European War.

7 "The Government of the United States maintains
8 that its attitude toward the European hostilities is
9 and will continue to be determined solely and exclusive-
10 ly by considerations of protection and self-defense;
11 its national security and the defense thereof."⁶¹

12 Ballantine, asked whether from here the
13 positions of the parties gradually drew closer, said
14 "No."⁶²

15 But by 6 September the Japanese willingness
16 to yield on this point had gone far enough that she
17 was prepared to undertake "that the attitudes of Japan
18 and the United States towards the European War will
19 be decided by the concepts of protection and self-
20 defence, and, in case the United States should partici-
21 pate in the European War, the interpretation and exe-
22 cution of the Tripartite Pact by Japan shall be
23 independently decided."⁶³

25 60. Ex. 1070 (Tr. 9,895-96).

61. Ex. 1092 (Tr. at 10,008-9).

62. Tr. 10,884.

63. Tr. at 10,779.

1 Of the 6 September proposal the witness
2 Ballantine says that "these proposals were much
3 narrower than the assurances given in the statement
4 communicated to the President on August 28th."⁶⁴
5 Nevertheless, he could not avoid admitting that from
6 the language of Japan's proposal "it was clear that
7 they meant to imply that they weren't under German
8 domination and that they were an independent nation
9 and that they would reach their own decision without
10 reference to Germany."⁶⁵ When pressed to say whether
11 this proposed phraseology was not then considered by
12 the Department of State to be sufficient evidence of
13 Japan's desire to escape from the Tripartite Pact
14 without formally denouncing it, he characteristically
15 changed the subject. "At one time, I believe, the
16 Secretary of State said that the Cabinet of Japan
17 might change, and that what might go for one Cabinet
18 might not go for the next Cabinet."⁶⁶ This is
19 astonishing! Why negotiate? If, a thorough-going
20 and satisfactory interpretation (as demanded by the
21 United States) once given, it has no value because
22 it might not be regarded as binding by a subsequent
23 Cabinet, it is an utterly futile and stultifying thing
24

25 64. Tr. 10,778.

65. Tr. 10,890.

66. Tr. 10,891.

1 to negotiate for any agreement at all, for when
2 arrived at it might in its entirety "not go" for the
3 next Cabinet.

4 17. In proposals of 25 September Japan went
5 still further; the language now is that "with regard
6 to developments of the situation prior to the restor-
7 ation of world peace, both Governments will be guided
8 in their conduct by considerations of protection and
9 self-defense; and, in case the United States should
10 participate in the European War, Japan would decide
11 entirely independently in the matter of interpreta-
12 tion of the Tripartite Pact between Japan, Germany
13 and Italy, and would likewise determine what actions
14 might be taken by way of fulfilling the obligations in
15 accordance with the said interpretation."⁶⁷

16 Secretary Hull's reaction to these succes-
17 sive Japanese offers of interpretation was quite the
18 opposite of that professed by his subordinate, Mr.
19 Ballantine; for in an "oral statement" of 2 October,
20 reviewing the negotiations and commenting on the
21 latest Japanese proposals, the Secretary said that
22 "with reference to the attitude of each country toward
23 the European War, this Government has noted with
24 appreciation the further step taken by the Japanese
25 67. Ex. 1245-E (Tr. at 10,786-87).

1 Government to meet the difficulties inherent in this
2 aspect of the relations between the two countries.

3 It is believed that it would be helpful if the Japan-
4 ese Government could give further study to the ques-
5 tion of possible additional clarification of its
6 position."⁶⁸

7 Mr. Ballantine was entirely unable to explain
8 the contradiction between Secretary Hull's noting this
9 further step with appreciation and his own dogged
10 insistence that Japan never offered any concession
11 in this regard⁶⁹; the best that he could do was to
12 suggest that Secretary Hull's language did not mean
13 what it said, but was an attempt "to be as conciliatory
14 and friendly as possible."⁷⁰ On the other hand, the
15 interpretation placed on these Japanese proposals by
16 the American Ambassador in Tokyo, Joseph C. Grew
17 (to whom they had been communicated)⁷¹ quite accorded
18 with Mr. Hull's; Ambassador Grew felt that, "In regard
19 to Japan's Axis relations the Japanese Government,
20 though refusing consistently to give an undertaking
21 that it will overtly renounce its alliance membership,
22 actually has shown a readiness to reduce Japan's
23

24 68. Ex. 1245-G (Tr. at 10,804-5).

69. Tr. 10,890-93.

70. Tr. 10,892.

71. Ex. 2895 (Tr. 25,801).

1 alliance adherence to a dead letter by its indica-
2 tion of willingness to enter formally into negoti-
3 ations with the United States."⁷²
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23 72. Tr. 10,588.
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1 If Mr. Grew's analysis was correct -- and it
2 is difficult to see what other interpretation can be
3 placed on the Japanese commitment -- we again encounter
4 the paradox. The United States professes to require
5 only such an "interpretation" of the pact as will
6 enable it to feel secure; having now been offered a
7 specific commitment that Japan will reject the inter-
8 pretation of the pact contended for by Germany and
9 Italy, is she not now content? To "decide entirely
10 independently" must mean in the context that Japan
11 will make that decision which the United States
12 requires; that is, will reject the contrary interpre-
13 tation which Germany demands. It can mean nothing
14 else; for unless Japan meant this she would have clung
15 to the language of her original proposal, that the
16 obligation "will be applied in accordance with the
17 stipulation of Article 3" of the pact. This begins
18 to look very much as if, despite the assurances that
19 the United States did not expect Japan to "betray its
20 treaty commitments,"⁷³ nothing short of outright
21 repudiation of the pact was to be acceptable. This,
22 however, was by no means all that Japan had to offer
23 on the interpretation of the Tripartite Pact alliance
24
25 73. Dooman to USHIBA (Tr. 25,821), Hamilton to IKAWA
(Tr. 25,731).

obligation. The department's view of the Japanese pro-
 1 proposal and of Mr. Grew's advice was that "there needed
 2 to be something much more definite and concrete."⁷⁴
 3 It was soon forthcoming.

4 18. Ambassador NOMURA reported to the Foreign
 5 Ministry on 8 October⁷⁵ that the Americans "figure that
 6 they must be much surer of our attitude toward the
 7 three-power pact." Soon after this, the KONOE Cabinet
 8 fell and (as has been fully explained by the evidence),⁷⁶
 9 the successor cabinet underwent considerable travail
 10 in the effort to find some new method of approach to
 11 the problem of the Japanese-American negotiations. Its
 12 labor resulted in, among other things, the production
 13 of proposal "A,"⁷⁷ which was forwarded to Ambassador
 14 NOMURA on 4 November.⁷⁸ It being then generally under-
 15 stood in Japan that an agreement in principle had been
 16 reached on the Tripartite-Pact question, relatively
 17 little attention had been devoted to the problem in
 18 the Liaison Conference meetings or in the drafting of
 19 proposal "A."⁷⁹ Nevertheless, conformably to the
 20 Ambassador's suggestion that clarification of the
 21

22 74. Testimony of Ballantine (Tr. 10,889).

23 75. Ex. 1144 (Tr. at 10,238).

24 76. Testimony of YAMAMOTO, Kumaichi (Tr. 25,921-24)
 and of TOGO, Shigenori (Tr. 35,679-91).

25 77. Ex. 1246 (Tr. 10,918).

78. Ex. 2925 (Tr. 25,966).

79. Testimony of YAMAMOTO (Tr. 25,921-25; 25,938-47)
 and of TOGO (Tr. 35,682-90).

question was still needed, the instruction was given

1 that

2 "It should be further clarified that Japan has
3 no intention of making any unwarranted extension of
4 the interpretation of the right of self-defense. With
5 regard to the interpretation and application of the
6 Tripartite Pact, it should be stated that the Japanese
7 Government, as has been repeatedly explained in the
8 past, will act in accordance with its own decision,
9 and that it is believed that the understanding of the
10 American Government has already been obtained on this
11 point.⁸⁰"
12

13 After presenting this proposal to the Secretary
14 of State on 7 November, Ambassador NOMURA explained it
15 to President Roosevelt at an interview on the 10th. He
16 again specifically raised the question (which Ballantine
17 denied ever having heard of) of the too-liberal American
18 interpretation of the term "self-defence",⁸¹ and sug-
19 gested that both parties give assurance that they had
20 no intention of abusing the recognized right of self-
21 defense. The Ambassador then made this interesting
22 remark: "The present circumstances under which Japan
23 is placed do not permit my government to go any further
24

25 80. Tr. 25,967.

81. Memorandum, Ex. 2927 (Tr. at 25,976).

1 to write in black and white than what is proposed in
2 the draft of September 25, which I have just quoted.
3 All I have to ask you is to 'read between the lines'
4 and to accept the formula as satisfactory."⁸² The memo-
5 randum of the conversation at this point contains the
6 note "(deleted by Ambassador NOMURA.)" Mr. Ballantine
7 was unable to give any explanation for the Ambassador's
8 deletion of his last sentence, which is the part lined
9 out in the original exhibit.⁸³ Yet the explanation
10 must be obvious; that the Ambassador was giving his
11 personal view of the meaning of what he had stated
12 under instructions, but realized that he had exceeded
13 the limits of diplomatic protocol in stating it. (In
14 fact, he said as much toward the end of the interview:
15 "I am afraid I may have used today some words which a
16 trained diplomat must not use."⁸⁴ This matter is of
17 no importance, for the understanding of the Ambassador
18 must, it is submitted, be that of anyone considering
19 this language: that Japan had in fact given the required
20 interpretation of its obligation. Japan was in fact,
21 by its various suggested phraseologies, inviting the
22 United States to read between the lines, had in fact
23 fully manifested the intention to escape the obligation
24

25 82. *Id.*, Tr. at 25,978.

83. Tr. 10,896.

84. Tr. at 25,982.

1 of the pact short of outright and avowed denunciation
2 of it.

3 On 15 November there was a further meeting
4 between Ambassador NOMURA and Secretary Hull, at which
5 time the Secretary again brought up the Tripartite-
6 Pact question. ⁸⁵ On this occasion the Secretary
7 "requested reassurance of the peaceful promise which
8 the Japanese Government had made on 28 August." Later
9 in the course of the conversation he repeated, in
10 answer to the inquiry of Minister WAKASUGI whether the
11 United States was requiring Japan to "secede" from
12 the pact, "that he hoped the pact of allegiance would
13 be rendered a dead letter as soon as an agreement was
14 reached between Japan and the United States." ⁸⁶ The
15 same day Ambassador KURUSU arrived in Washington, and
16 he had his first interview with Secretary Hull and
17 President Roosevelt on 17 November. ⁸⁷ In the conversa-
18 tion with the President the Tripartite-Pact question
19 again came up, and Ambassador KURUSU pointed out that
20 Japan, having treaty obligations as well as her
21 national honor to consider, dared not commit treaty
22 violations. It was not to be assumed, he said,
23

24 85. Memorandum, ex. 2934, at Tr. 26,009.

25 86. Id., at Tr. 26,012.

87. Telegram from NOMURA to TOGO, ex. 2942, Tr. 26,032.

1 "that the United States -- which has been a
2 strong advocate of observance of international commit-
3 ments -- would request Japan to violate one . . .
4 whereas Japan has stated that her action with respect
5 to the obligation to go to war under the Tripartite
6 Pact will be determined entirely independently, it
7 appears that the United States took it to mean that
8 Japan intended to stab the United States in the back
9 when she had become deeply entangled in the European
10 war. He stated that such an interpretation was
11 entirely wrong, and that clarification had been made,
12 to the effect that Japan would act independently, for
13 the purpose of dispelling an apparent misapprehension
14 on the part of the United States that Japan would,
15 under the influence of Germany, move at Germany's
16 demand. If some such broad understanding as was sug-
17 gested by the President were reached at the present
18 moment between Japan and the United States concerning
19 the Pacific problems, KURUSU went on, it would
20 naturally 'outshine' the Tripartite Pact, and American
21 apprehension over the problem of application of the
22 pact would consequently be dissipated.⁸⁸
23

24 At a meeting a few days later Secretary Hull
25 brought up Ambassador KURUSU's suggestion of "outshining"
88. Ex. 2942 (Tr. at 26,034-36, as corrected).

1 the Tripartite Pact, and "expressed his sympathy" with⁸⁹
2 it, saying that he, too, considered it a good idea.

3 19. Meanwhile, it had been decided in Tokyo
4 that proposal "A" had no prospect of resulting in
5 agreement, and the Ambassadors were therefore instructed
6 to present proposal "B," which was done on 20 Novem-
7 ber.⁹⁰ Proposal "B," being an attempt to reach a modus
8 vivendi, did not refer to the Tripartite-Pact question;
9 but in sending explanations to Ambassador NOMURA
10 concerning it, Foreign Minister TOGO authorized the
11 Ambassadors, in explanation of the statement that
12 "Japan would decide entirely independently" concerning
13 its obligations under the Tripartite-Pact, to

14 "point out that the Empire can decide inde-
15 pendently as to whether or not there had been an
16 attack, without being bound to the interpretations of
17 the other countries involved in the Tripartite Treaty.
18 You may make it clear that there are no secret agree-
19 ments in the Tripartite Treaty."⁹¹

20
21 Consequently, Ambassador KURUSU promptly
22 called upon Secretary Hull to offer one further attempt
23 to an interpretation of the alliance obligation

24 89. Telegram from NOMURA to TOGO, ex. 2943 (Tr. 26,039).

90. Testimony of YAMAMOTO (Tr. 26,028).

25 91. Telegram from TOGO to NOMURA, ex. 1180 (Tr. at
10,388).

1 satisfactory to Mr. Hull. The Ambassador handed to
2 the Secretary on 21 November a draft letter which he
3 proposed to sign "by way of attempting clarification."
4 This letter is of sufficient importance to be quoted
5 in its entirety:

6 "Washington, November 20, 1941.

7 "Mr. Secretary: Through several conversations
8 I have had the honor of holding with Your Excellency,
9 I was rather surprised to learn that a deep-seated
10 misconception prevails among your people about the
11 obligation which Japan assumed under the Tripartite
12 Pact.

13 "As Your Excellency is fully aware I am the
14 one who signed the said treaty under the instructions
15 of my government; and I am very happy to make the
16 following statement which I trust will serve to era-
17 dicate the aforesaid false impression:

18 "It goes without saying that this treaty can
19 not and does not infringe, in any way, upon the
20 sovereign right of Japan as an independent state.

21 "Besides, as Article III of the pact stands,
22 Japan is in a position to interpret its obligation
23 freely and independently and is not to be bound by
24 the interpretation which the other, high contracting

25 92. Memorandum, ex. 2945 (Tr. 26,045).

parties may make of it. I should like to add that my government is not obligated by the aforementioned treaty or any other international engagement to become a collaborator or cooperator in any aggression whatever by any third power or powers.

"My government would never project the people of Japan into war at the behest of any foreign power: it will accept warfare only as the ultimate, inescapable necessity for the maintenance of its security and the preservation of national life against active injustice.

"I hope that the above statement will assist you in removing entirely the popular suspicion which Your Excellency has repeatedly referred to. I have to add that, when a complete understanding is reached between us, Your Excellency may feel perfectly free to publish the present communication.

"I have the honor, etc."⁹³

The clarification here proposed might seem to a disinterested observer to be a complete compliance with the United States demands. It is difficult to see how, short of an outright repudiation of the Tripartite Pact, Japan could go beyond the language here proposed. Japan would interpret its obligation "freely and independently," not being bound "by the
93. Memorandum, ex. 2945 (Tr. at 26,046-47).

~~interpretation which the other high contracting parties"~~

1 might make. Moreover -- this is the really significant
2 language, in view of the repeated American insistence
3 on such statements of principle -- Japan was "not
4 obligated by the aforementioned treaty or any other
5 international engagement to become a collaborator or
6 cooperater in any aggression whatever by any third
7 power or powers." This, it is submitted, is as much
8 as to say that Japan tacitly accepted the American view
9 of the defensive character of its increasing involve-
10 ment in the European war, and was willing to undertake
11 that that involvement would not be made the pretext for
12 an attack by Japan. Finally, if this were not enough,
13 there is the authorization to publish the letter upon
14 conclusion of the Japanese-American understanding. It
15 requires little imagination to conceive what would
16 have remained of the Tripartite Alliance once the news
17 of this publication reached the chancelleries of
18 Wilhelmstrasse and Palazzo Chigi.
19

20 20. Secretary Hull's reaction was quite
21 different -- was, considering the importance which he
22 had theretofore attached to this question, rather
23 inexplicable. We have it in his own words:
24

25 "I looked at the paper and then asked Mr. KURUSU
whether he had anything more on the whole subject of a

1 peaceful settlement to offer. He replied that he did
2 not. I said that I did not think this would be of any
3 particular help and so dismissed it.⁹⁴

4 Bearing in mind that the United States was
5 demanding of Japan not abrogation of the Tripartite
6 Pact but only such an interpretation of it as should
7 be satisfactory to the United States, it is difficult
8 to conceive what "would be of any particular help" if
9 this proposal was not. Perhaps this was one of those
10 occasions when the Secretary was afraid that "what
11 might go for" the current cabinet might not "go for
12 the next cabinet." By this time of course, as Ballan-
13 tine so volubly explains, the State Department thought
14 that it knew Japan to be entirely insincere in the
15 negotiations, and therefore had no confidence in any
16 undertakings which she might give -- or, to use the
17 phrase which he applies to the Japanese conduct, was
18 only "keeping up the appearance of continuing nego-
19 tiations."⁹⁵ Which suggests questions which we shall
20 come to somewhat later. On this evidence, the Tribunal
21 can assay the opinion of Ballantine that there was no
22 feeling in the State Department by November that the
23 parties were measurably near to agreement on the
24

25 94. Ió. (Tr. at 26,045).

95. Tr. 10,961.

Tripartite-Pact question.⁹⁶ The United States had
1 desired the Government of Japan to declare "that it is
2 under no commitment to the Axis Alliance or otherwise
3 which is inconsistent with the terms of" the proposed
4 Japanese-American agreement;⁹⁷ the Tribunal can judge
5 whether the Government of Japan did not time and again
6 so declare to the satisfaction of any reasonable require-
7 ment.
8

9 There seems to have been no further discussion
10 of the Tripartite-Pact question.⁹⁸ Within a few days
11 after the meeting last mentioned, Secretary Hull,
12 having come to the decision to "break it off" handed
13 to the Japanese representatives his note of 26 Novem-
14 ber,⁹⁹ which was the last document or proposal. This
15 note contains the statement that "it is believed that
16 in our discussions some progress has been made in
17 reference to the general principles which constitute
18 the basis of a peaceful settlement covering the entire
19 Pacific area."¹⁰⁰ This "general principles" seems not
20 to relate to any of the concrete matters which had for
21

22 96. Tr. 10,896.

23 97. American proposal of 16 May, ex. 1071 (Tr. at 9905).

24 98. The State Department however knew additionally,
25 from intercepting Foreign Minister TOGO's telegram of
20 November to Ambassador NOMURA (ex. 1180, Tr. at
10,388) that the Ambassador would also give assurance
that there was no secret agreement attached to the
Tripartite Pact.

99. Ex. 1245-I, (Tr. 10,815).

100. Tr. at 10,816.

1 six months been the subject of almost daily discussions,
2 but rather to refer to the so-called "Four Principles."
3 Secretary Hull had mentioned the "Four Principles" as
4 being his conception of the necessary basis for an
5 agreement, on 16 April, when he first brought up the
6 matter of the original private draft of agreement,¹⁰¹
7 and they had been occasionally referred to thereafter.
8 It may be convenient at this point to digress moment-
9 arily and consider the matter of the "Four Principles."

10 "THE FOUR PRINCIPLES."

11 21. At the interview of 16 April just
12 referred to, Secretary Hull told Ambassador NOMURA

13 ". . . that the one paramount preliminary
14 question about which my government is concerned is a
15 definite assurance in advance that the Japanese Govern-
16 ment has the willingness and ability to go forward with
17 a plan along the lines of the document we have referred
18 to and the points brought up in our conversation in
19 relation to the problems of a settlement."¹⁰²

21 After thus suggesting, however, that the
22 points treated of in the original draft (the same
23 points which served as the basis for all later drafts)
24 should be those for negotiation, the Secretary then
25 added that his government wished the assurance also of

101. Memorandum, ex. 1061 (at Tr. 9867).

102. Id., Tr. at 9867.

1 Japan's willingness "to adopt the principles which
2 this government has been proclaiming and practicing as
3 embodying the foundation on which all relations between
4 nations should properly rest."¹⁰³

5 He then handed to Ambassador NOMURA a sheet
6 of paper on which he had written the following four
7 points:

8 "1. Respect for the territorial integrity
9 and the sovereignty of each and all nations.

10 "2. Support of the principle of non-
11 interference in the internal affairs of other countries.

12 "3. Support of the principle of equality,
13 including equality of commercial opportunity.

14 "4. Non-disturbance of the status quo in
15 the Pacific except as the status quo may be altered
16 by peaceful means."¹⁰⁴

17 Although at the outset of the negotiations
18 Mr. Hull had thus stated as coordinates both the
19 particular -- the specific questions upon which he
20 understood that negotiations were to proceed -- and the
21 general -- the principles which he said his government
22 felt should embody the foundation of relations between
23 nations -- it gradually became apparent as negotiations
24 progressed that these "Four Principles" not only
25

103. Ibid.

104. Id., Tr. at 9867-68.

1 represented the expression of that high idealism which
2 Americans have always been proud to feel have inspired
3 their national policy, but also were symptomatic of a
4 doctrinarianism which was to exercise a baleful
5 influence throughout. It is submitted that no one could
6 expect, practically, that negotiations would be con-
7 ducted on the subject of, for example, "the principle
8 of non-interference in the internal affairs of other
9 countries"; the principle having been stated and
10 accepted as a principle, it remains to reach an under-
11 standing by negotiation on what constitutes such non-
12 interference. Does not the historical background
13 alone of large numbers of Japanese troops at that
14 moment in China, of the past with American troops in
15 Mexico, in Nicaragua, in Haiti, of The Boxer Powers'
16 troops in China, of American and Japanese troops in
17 the Maritime Province of Siberia, suggest the need of
18 some definition of the principle? To agree on such a
19 definition was the purpose of negotiations; Secretary
20 Hull himself never suggested that respect for this
21 principle implied the immediate and unconditional
22 withdrawal of all Japanese troops from territory of
23 other countries. Yet at crucial moments of negotiating
24 such details these "Four Principles" had a way of
25 ~~suddenly arising to disturb the course of discussions~~

1 on practical matters and divert it into doctrinarian
2 bypaths.

3 22. Ambassador NOMURA had on 8 May reported
4 to Foreign Minister MATSUOKA the United States'
5 "Four Principles" and her insistence thereupon. ¹⁰⁵

6 But the Ambassador at the same time said that he had
7 proposed to the Secretary "not to become engrossed
8 in disputes on abstract principles," but "to meet
9 the actual situation of Japanese-American relations
10 properly, confining to the minimum disputes on prin-
11 ciples and view of the world which the two nations
12 embraced." ¹⁰⁶

13 For a time the American authorities
14 adopted this practical view of the matter, and did
15 devote themselves to businesslike discussion of the
16 means of arriving at a settlement. From the summer,
17 however, the "Four Principles" began to crop up again
18 and tended to be injected into the discussions when-
19 ever the parties could not see eye to eye on the
20 method of settling some particular problem. By Sep-
21 tember this tendency to seek refuge in generalities
22 had come to exercise such a discouraging influence
23 on the negotiations that the Premier of Japan, Prince
24 KONOE, took the extraordinary way of arranging for a
25 105. Ex. 2872 (Tr. at 25,709).
106. Tr. at 25,710.

1 private dinner with Ambassador Grew, as an oppor-
2 tunity for a long and frank conversation in an effort
3 to dispose of this question.^{107.} At the meeting on
4 6 September, Prince KONOYE (saying that he hoped that
5 his views would be transmitted personally to President
6 Roosevelt, perhaps to contribute to the success of
7 negotiations) at the outset stated that he, "and
8 consequently the Government of Japan, conclusively
9 and wholeheartedly agree with the four principles
10 enunciated by the Secretary of State as a basis for
11 the rehabilitation of relations between the United
12 States and Japan."^{108.} He then continued to discuss
13 various aspects of the negotiations as exemplifying
14 the practical application of the principles. This
15 should have disposed of the "Four Principles" and
16 left the field open for continued attempts at settle-
17 ment of the details by agreements which would implement
18 them. Apparently, however, the American side seized
19 upon this assurance as an opportunity for metaphysical
20 discussion: Secretary Hull's elaborate oral statement
21 of 2 October again recites the four principles in
22 extenso, and on 13 September already we find Foreign
23 Minister TOYODA saying to his ambassador that while
24
25 107. Ambassador Grew's report, exhibit 2836(T.25368-73).
108. T. 25369.

1 he still understands "that the United States wants
2 us to acknowledge her so-called four fundamental
3 principles," ¹⁰⁹ it would be more to the point to get
4 the discussion onto the level of the details in the
5 pending draft proposals.

6 Unfortunately, the United States authorities
7 were never willing to accept this view, but to the
8 end of negotiations reiterated their implied insis-
9 tence, culminating in the language above quoted from
10 the 26 November note, that debate on principles could
11 solve the pending problems between the nations. It
12 is submitted that this attitude was not unfairly
13 described in the final Japanese note in the following
14 language:

15 "On the other hand, the American Government,
16 always holding fast to theories in disregard of
17 realities, and refusing to yield an inch on its
18 impractical principles, caused undue delay in the
19 negotiations. . . The American Government advocates
20 in the name of world peace these principles favorable
21 to it and urges upon the Japanese Government the
22 acceptance thereof. The peace of the world may be
23 brought about only by discovering a mutually acceptable
24 formula through recognition of the reality of the
25

1 situation and mutual appreciation of one another's
2 position. An attitude such as ignores realities and
3 imposes one's selfish views upon others will scarcely
4 serve the purpose of facilitating the consumption of
5 negotiations." 110.

6 ECONOMIC ACTIVITIES

7 23. Of the three chief problems forming the
8 subject matter of the Japanese-American negotiations,
9 another was brought by repeated Japanese concessions
10 to the point where it can fairly be said that agree-
11 ment should have resulted. This is the question of
12 the economic activities of the two nations in the
13 Pacific area, and nondiscrimination in international
14 commercial intercourse. The original Japanese position
15 on this point, as stated in the draft proposal of
16 12 May, was this:

17 "V. Economic Activity of Both Nations in
18 the Southeastern Pacific Area.

19 "Having in view that the Japanese expansion
20 in the direction of the Southwestern Pacific area is
21 declared to be of peaceful nature, American coopera-
22 tion shall be given in the production and procurement
23 of natural resources (such as oil, rubber, tin, nickel)
24 110. Exhibit 1245-X (T. at 10837-38).
25

111.
which Japan needs."

1 On 16 May, at the meeting between Secretary
2 Hull and Ambassador NOMURA, this and other points were
3 discussed. The Secretary at that time produced a re-
4 draft of the clause touching on this question, in the
5 following language:
6

7 "On the pledged basis of guarantee that
8 Japanese activity and American activity in the
9 Southwestern Pacific area shall be carried on by peace-
10 ful means, the Japanese Government and the Government
11 of the United States agree to cooperate each with the
12 other toward ensuring on the basis of equality of
13 opportunity equal access by Japan and by the United
14 States to supplies of natural resources (such as oil,
15 rubber, tin, nickel) which each country needs for the
16 safeguarding and development of its own economy."^{112.}
17

18 In discussing which redraft, the Secretary
19 "expressed the hope that subsequently other countries
20 could be brought in. He alluded in this connection to
21 the fact that the benefits of our trade program in
22 South America are enjoyed by all nations."^{113.} On
23 31 May Ambassador NOMURA was handed a complete redraft
24 of the proposed agreement. The clause on economic

25 111. Exhibit 1070 (T. at 9897).
112. Exhibit 1071 (T. at 9906-7).
113. Exhibit 2873 (T. at 25715).

1 activity was then slightly altered, appearing in the
2 following form:

3 "On the basis of mutual pledges hereby
4 given that Japanese activity and American activity
5 in the Pacific area shall be carried on by peaceful
6 means and in conformity with the principle of non-
7 discrimination in international commercial relations,
8 the Japanese Government and the Government of the
9 United States agree to cooperate each with the other
10 toward obtaining nondiscriminatory access by Japan
11 and by the United States to commercial supplies of
12 natural resources (such as oil, rubber, tin, nickel)
13 which each country needs for the safeguarding and
14 development of its own economy."^{114.}

15 An oral statement accompanying the draft
16 pointed out that the section had "been rephrased to
17 make the provisions thereof applicable equally to
18 the United States and Japan."^{115.} As it proved later,
19 however, the significant alteration was the substitu-
20 tion of the word "Pacific" for "Southwestern Pacific."
21 Conversations were held on the basis of this last
22 proposal, and on 4 June the Japanese representatives
23 offered still another formula for this clause, Their

24
25 114. Exhibit 1078 (T. at 9943-44).
115. Exhibit 1079 (T. at 9951).

1 proposal was in the following language:

2 "Noting that Japanese expansion in the
3 direction of the Southwestern Pacific area is de-
4 clared to be of peaceful nature, American cooperation
5 and support shall be given in the production and pro-
6 curement of natural resources (such as oil, rubber,
7 tin, nickel) which Japan needs." 116.

8 In explanation of continuing to limit the
9 application of the clause to the Southwestern Pacific
10 area, whereas Secretary Hull's proposal had on 31
11 May been changed to extend it to the Pacific at large,
12 it was said that it was in view of the special interest
13 of Japan in that area that it was felt that this sec-
14 tion should be made to relate to it specifically.

15 24. On 15 June the Japanese side again
16 presented a complete redraft of the agreement. 117. The
17 clause which we are here interested in represents
18 a compromise between the earlier American and Japanese
19 positions; the wording "Pacific" is accepted, as well
20 as the Americans' "mutual pledges," which had been
21 the subject of some little discussion. 118.

22 "On the basis of mutual pledges hereby given
23 that Japanese activity and American activity in the
24

25 116. Memorandum, Ex. 1083 (T. 9974).

117. Ex. 1087 (T. 9988-95).

118. Memorandum, Ex. 1083 (T. 9974-76).

1 Pacific area shall be carried on by peaceful means
2 and in conformity with the principle of nondiscrimi-
3 nation in international commercial relations, the
4 Japanese Government and the Government of the United
5 States agree to cooperate each with the other toward
6 obtaining nondiscriminatory access by Japan and by
7 the United States to commercial supplies of natural
8 resources (such as oil, rubber, tin, nickel) which
9 each country needs for the safeguarding and develop-
10 ment of its own economy."^{119.}

11 This time the State Department responded
12 with what was to be the last proposal made by it in the
13 negotiations, that of 21 June.^{120.} It is interesting
14 to note that with this proposal the differences be-
15 tween the parties concerning economic activities
16 ceased to exist, for Section V of the 21 June draft
17 is in the identical language of the Japanese 15 June
18 draft.^{121.} The Japanese had there made the concession
19 of accepting the two major demands in this branch of
20 the negotiations, and if Ballantine's sweeping general-
21 izations concerning Japan's making no concessions are
22 to be related to this point, we can only say that it
23 is monstrous for him to make such an assertion.
24

25 119. T. at 9993.
120. Exhibit 1092(T. 10005-19).
121. T. at 10011.

1 Thereafter the negotiations were suspended,
 2 being resumed in August. The next event in the
 3 chronicle of the economic-activities question was the
 4 fresh proposals which Ambassador NOMURA was directed
 5 on 5 August to transmit to the United States, they
 6 being intended as a resumption of the negotiations
 7 at the point where they were interrupted in July. ^{122.}

8 This proposal, duly handed to Secretary Hull on the
 9 6th, ^{123.} contained the following proposal additional
 10 to that already made and agreed upon, and to be in-
 11 corporated into it ("it will promptly be taken into
 12 the framework of adjustment of diplomatic relations."): ^{124.}

13 ". . . that, in order to remove such causes
 14 as might be responsible for the instability of the
 15 economic relations between Japan and the United States
 16 in East Asia, the Japanese Government will cooperate
 17 with the Government of the United States in the pro-
 18 duction and procurement of such natural resources as
 19 are required by the United States." ^{125.}

20 Secretary Hull, as reported by Ambassador
 21 NOMURA, showed little interest in the proposal. ^{126.}

22 Thereafter, Ambassador NOMURA considered

23
 24 ^{122.} Ex. 2884 (T. at 25759).
 25 ^{123.} Ex. 2886 (T. 25765).
^{124.} T. at 25761.
^{125.} T. at 25762.
^{126.} Telegram from NOMURA to TOYODA, Ex. 2886 (T.25765).

1 agreement to have been reached on this question -- as
2 obviously it had been with the presentation of the
3 American proposal of 21 June. The Ambassador on
4 3 September, in fact, stated that understanding of
5 his to President Roosevelt and Secretary Hull, neither
6 of whom dissented from it or had any comment to offer
7 on the matter: "As to the three pending issues, I
8 said that an agreement in principle had been reached
9 so far as two of them were concerned."^{127.}

10 25. On 6 September, negotiations not having
11 progressed, a further Japanese proposal was
12 presented.^{128.} This is not a complete redraft of the
13 understanding, but relates to certain points only,
14 the part concerning economic activities being con-
15 tained in two separate clauses:

16 "(f) that Japan's activities in the South-
17 western Pacific Area will be carried on by peaceful
18 means and in accordance with the principle of non-
19 discrimination in international commerce, and that
20 Japan will cooperate in the production and procure-
21 ment by the United States of natural resources in the
22 said area which it needs.
23

24

25 127. Telegram from NOMURA to TOYODA, Ex.2894(T.25799).
128. Ex. 1245-D (T. 10778).

1 "(b) that the United States will reciprocate
Japan's commitment in point (f) referred to above." 129.

2 Why the return was made (to Secretary Hull's
3 natural disappointment) 130. to the phraseology
4 "Southwestern Pacific Area" is not explained unless
5 by the Secretary's earlier failure to manifest interest
6 in the Japanese acceptance of his proposal extending
7 it to the Pacific area. This is unimportant, however,
8 for as will be seen presently, the Japanese eventually
9 again accepted all American suggestions in this matter.
10 The Japanese redraft proposal of 25 September is some-
11 what new in form, and still retains the limitation to
12 the Southwestern Pacific area.

14 "Both governments mutually pledge themselves
15 that the economic activities of Japan and the United
16 States in the Southwestern Pacific area shall be
17 carried on by peaceful means and in conformity with
18 the principle of nondiscrimination in the international
19 commercial relations in pursuance of the policy stated
20 in the preceding paragraph, both governments agree to
21 cooperate each with the other towards the creation of
22 conditions of international trade and international
23 investment under which both countries will have a

24 129; Exhibit 1245-D (T. at 10779-80.)
25 130. Exhibit 1245-G (T. at 10802-3).

1 reasonable opportunity to secure through the trade pro-
2 cess the means of acquiring those goods and commodi-
3 ties which each country needs for the safeguarding and
4 development of its own economy.

5 "Both governments will amicably cooperate for
6 the conclusion and execution of agreements with the
7 powers concerned in regard to the production and supply,
8 on the basis of nondiscrimination, of such specific
9 commodities as oil, rubber, nickel, and tin."^{131.}

10 Thereafter, Ambassador NOMURA was still report-
11 ing the economic question to the Foreign Minister, on
12 3 October, as having "already been nearly settled."^{132.}

13 However, he notes also the language of Secretary Hull
14 which was the occasion of resumed debates on the matter,
15 resulting in Japanese acceptance of still further
16 modifications of the proposed agreement on this point,
17 "Mr. Hull abides by the principle of free trade and
18 regards bloc economy as a cause of war. He is now
19 trying to make this principle prevail in regard to the
20 United Kingdom also."^{133.}

21 There seems to have been no further development
22 in the matter of economic activities until the KONOYE
23 Cabinet having been replaced by the TOJO, Proposal "A"
24

25 131. Ex. 1245-E (T. at 10789-90).

132. Ex. 2906 (T. 29845).

133. Ibid.

1 was agreed upon for submission to the United States.
2 Proposal "A" was not actually a completely redrafted
3 proposal; rather, it consisted of modification to be
4 made in the proposal of 25 September. The provision
5 on economic activities therefore appears in Proposal
6 "A" in the form of the following sentence, to be
7 included in a revision of Section V of the pending
8 draft:

9 "Principle of Nondiscrimination."

10 "The Japanese Government recognizes the
11 principle of nondiscrimination in international com-
12 mercial relations to be applied to all the Pacific
13 areas, inclusive of China, on the understanding that
14 the principle in question is to be applied uniformly
15 to the rest of the entire world as well."^{134.}

16 This provision seems to represent a complete
17 acceptance of the American position on this question;
18 the point agreed on 21 June is retained, with an
19 addition to incorporate Secretary Hull's desire, often
20 expressed in these negotiations, of making the principle
21 universal in application. As the Foreign Minister
22 explained in forwarding the proposal to his Ambassador,
23 it was supposed that this clause would be entirely
24 satisfactory inasmuch as on the one hand it represented
25 134. Ex. 1246 (T. 10920).

1 a total abandonment of the long-standing Japanese
2 insistence on recognition of special Japanese rights
3 in China growing out of geographical propinquity; and
4 on the other hand, in suggesting the extension of
5 the principle of nondiscrimination to the whole world,
6 it represented merely an application of the United
7 States' own suggestion that "it would be undesirable
8 if either the United States or Japan were to pursue
9 one course of policy in certain areas while at the
10 same time pursuing an opposite course in other areas."^{135.}

11 26. Summing up the course of the negotiations
12 on this question of economic activities, the witness
13 Ballantine says that "some of the wordings" suggested
14 by the American side "were embodied, but they were
15 largely, in effect, nullified by the various quali-
16 fications the Japanese put in."^{136.} The embodiment
17 of the wordings is readily apparent, but one searches
18 in vain for qualifications imposed or suggested by
19 Japan. Ballantine's position, however, seems to have
20 been that this addition in Proposal "A" of the words
21 "on the understanding that the principle in question
22 is to be applied uniformly to the rest of the entire
23

24 135. Telegram from TOGO to NOMURA, Exhibit 2925
(T. at 25968-9).

25 136. T. 20939.

world as well" constitutes a "qualification" which
1 nullifies the acceptance of the American proposal.
2 The basis for this position of his was entirely
3 destroyed by cross-examination. He was compelled
4 to admit that, as Ambassador NOMURA had pointed out
5 to President Roosevelt,^{137.} the application of the
6 principle throughout the whole world was along-
7 cherished scheme of Mr. Hull's -- "that was a con-
8 sistent position of the Secretary of State."^{138.} It
9 would seem that, Secretary Hull's consistently-
10 advocated position being accepted by Japan, the
11 Secretary could have recognized that a meeting of the
12 minds had occurred on this point. This was in fact
13 exactly his immediate reaction upon receipt of
14 Proposal "A": Ambassador NOMURA reported that "after
15 careful reading, Hull concurred in the clause re-
16 specting nondiscrimination in trade and revealed his
17 opinion that its adoption would prove beneficial also
18 to Japan."^{139.}

20 However, the mood passed, and the Secretary
21 handed to Ambassador NOMURA on 15 November an oral
22 statement in which he pointed out "that the last sen-
23 tence of the Japanese proposal" -- the sentence here

24 137. Memorandum, Ex. 2927 (T. 25974).
25 138. T. 10941.
139. Ex. 2928 (T. at 25989).

1 under consideration -- "sets forth a condition the
2 meaning of which is not entirely clear."^{140.} In what
3 respect it lacked clarity seems to have been suggested
4 by the Secretary in his next words: That the principle,
5 he assume, was not meant to bind the United States to
6 responsibility for practices outside of its jurisdic-
7 tion, or practices by other nations.^{141.} This was
8 on 15 November. The correctness of Mr. Hull's
9 assumption just quoted had already, two days earlier,
10 been confirmed by Japanese Minister WAKASUGI, in a
11 conversation with this same Ballantine;" "Mr. WAKA-
12 SUGI said that what the Japanese Government meant'
13 by this phrase in question 'was that the principle
14 would be applied by the United States and by Japan,
15 and did not refer to the universal application of
16 those principles by all countries. Mr. Ballantine
17 asked whether this was not a very important point to
18 be brought out clearly and authoritatively."^{142.}
19 Ballantine, the negotiator, was more accurate than
20 Ballantine the witness: The point was "very important."
21 for it meant that for the second time Japan's ac-
22 ceptance of the American position had brought the
23 parties to the place where agreement had to be
24

25 140. Ibid.

141. T. 10942.

142. Ibid.

1 recognized. The net result of this little passage
2 is clearly, it is submitted, that Mr. Hull's long-
3 cherished principle was given complete acceptance
4 by Japan, who agreed that it should be applied to
5 the world at large. Mr. Hull welcomed the conces-
6 sion ("concurred in the clause"): but out of an
7 abundance of caution his assistants requested from
8 the Japanese confirmation -- which was unhesitatingly
9 given -- that it was intended by the proviso only
10 to bind the United States and Japan, not other coun-
11 tries under the control of neither. This confirma-
12 tion seems to have been well understood by Mr. Hull,
13 as is shown by his assuming that fact in his conver-
14 sation with the Ambassador on the 15th.

15 THE PRESIDENT: We will recess for fifteen
16 minutes.

17 (Whereupon, at 1445, a recess was
18 taken until 1500, after which the proceedings
19 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: On page 60, Section 27:

5 The prosecution's contention that this
6 proviso "was at the time well known to be impossible
7 of fulfillment"¹⁴³ is thus wide of the mark, for on
8 Mr. Hull's correct assumption of its scope it was
9 readily susceptible of being put into practice. When
10 it was put to the witness Ballantine that with these
11 discussions there had been a meeting of the minds on
12 this point, he evaded answering, giving the unresponsive
13 reply that

14 The fact of the matter is we never got a
15 reply to our memorandum of November 15, and KURUSU, on
16 November 18, made statements to the Secretary which
17 threw doubt on how far the Japanese Government could
18 ever go in the matter¹⁴⁴.

19 He was then asked, "Will you tell us as well
20 as you are able to remember what those statements of
21 Mr. KURUSU were?" To this he gave it as his recollection
22 that KURUSU mentioned exchange controls in China and
23 his inability to promise what Japan could do after the
24

25 143. Summation, Sections G-120 (T. 39,660).

144. T. 10,943.

1 war, but added that he was not sure of his memory and
2 referred the cross-examiner to the record ¹⁴⁵. It
3 was seemingly with good reason that he distrusted his
4 memory; for no such record has been produced. Had
5 it been, we might reasonably expect to find that in
6 the light of it Mr. Ballantine's statement of the
7 effect of KURUSU's language would be subject to the
8 qualifications with which one must usually accept his
9 conclusions. At any rate, there is nothing in the
10 evidence to prove any such statement of KURUSU's, nor
11 do we find in the evidence any memorandum of 15
12 November bearing on this point, unless by "memorandum"
13 is meant the oral statement, which so far as appears
14 in no way requires an answer. What we do find in the
15 evidence, however, is Ambassador NOMURA's report to
16 the Foreign Minister of his conversation with Mr. Hull
17 of that day. ¹⁴⁶ The Secretary of State at that time
18 used this curious language: "Hull said that the earnest
19 efforts on the part of the United States have ripened
20 into the present proposal concerning the problem of
21 commerce" ¹⁴⁷. This does not sound as if the proposal
22 was "unclear", as the oral statement suggested, but
23 rather as if it was perfectly understood and cordially
24

25 145. Ibid.

146. Exhibit 2934 (T. 26,006).

147. Ibid.

1 welcomed. (The obvious explanation of this discrepancy
2 is that the oral statement had been prepared before
3 the Ballantine-WAKASUGI talk of the 13th, and was
4 delivered without alteration.) Secretary Hull went
5 on to point out that the United States had concluded
6 commercial treaties with twenty-two nations, greatly
7 advancing its policy of most-favored-nation treatment
8 and thereby removing obstacles to the commerce of the
9 world; and, "he declared that it is the policy of the
10 United States to apply generally the principles of
11 non-discrimination in commercial relations"^{148.} He
12 then repeated that he hoped that Japan would withdraw
13 her proposal to apply that principle to the entire
14 Pacific area on condition of its application to the
15 rest of the world--not on the ground that it was unclear,
16 not as contradictory to the American position, but
17 "inasmuch as it would not be necessary in the light
18 of the above-mentioned American policy, and as the
19 United States cannot commit itself to anything which
20 concerns countries outside the jurisdiction of the
21 United States"¹⁴⁹. Certainly the proposal was "un
22 necessary", just because it coincided exactly with the
23 American position; no one suggested, after Minister
24

25 148. Id. (T. 26,007).

149. Ibid.

1 WAKASUGI's clarification, that it was improper, or
2 unacceptable, or "narrow". Mr. Hull, in saying that
3 the United States could not commit itself to anything
4 which concerns countries" outside its jurisdiction,
5 could not seriously have believed -- even if WAKASUGI
6 had not specifically said that the principle would be
7 applied by the United States and by Japan -- that the
8 Japanese proposal meant that Japan and the United
9 States, or either of them, was to assume responsibility
10 for the commercial policies of Britain, Germany, Nepal
11 or Liberia, or of any nations but the United States
12 and Japan. It was quite understood that the parties
13 were contracting for themselves, not for the world
14 at large. The "present proposal concerning the problem
15 of commerce" which Hull said represented the ripening
16 of the earnest American efforts was, of course,
17 Proposal "A", the one then current and then under
18 discussion. One can but wonder at the meaning of the
19 Secretary's insistence that Japan, in going so far
20 to meet him as to adopt unqualifiedly the principle
21 with which his name was identified throughout the world,
22 had made the situation unclear or had in short done
23 anything but concede the entire question.

24
25 THE CHINA QUESTION.

28. We turn now to the third, and by far

1 the most important, of the main issues between the
2 United States and Japan. This is the question of
3 Chinese-Japanese relations, a question which, however,
4 in practice came down to the matter of the stationing
5 of Japanese troops in China and their withdrawal
6 therefrom. Conformably with the complexities of the
7 China Affair itself, this question proved to be one
8 of exceeding intricacy and difficulty; it consumed
9 much the greater part of the time and thought of the
10 negotiators; it brought about the downfall of a govern-
11 ment in Japan; and it was finally to be the rock upon
12 which were wrecked the Japanese-American negotiations
13 and the hopes for averting a war in the Pacific.

14 The first Japanese proposal, that of 12 May,
15 contained this very brief provision relative to the
16 China Affair:

17 "III. The relations of both nations toward
18 the China Affair.

19 "The Government of the United States, acknow-
20 ledging the three principles as enunciated in the KONOYE
21 Statement and the principles set forth on the basis
22 of the said three principles in the treaty with the
23 Nanking Government as well as in the Joint Declaration
24 of Japan, Manchukuo and China and relying upon the
25 policy of the Japanese Government to establish a

1 relationship of neighborly friendship with China, shall
2 forthwith request the Chiang Kai-shek regime to negotiate
3 peace with Japan" ¹⁵⁰ .

4 The "Annex" contained the following "oral
5 explanation" in connection with this section:

6 "The terms for China-Japan peace as proposed
7 in the original Understanding differ in no substantial
8 way from those herein affirmed as the "principles of
9 KONOYE". Practically, the one can be used to explain
10 the other.

11 "We should obtain an understanding, in a
12 separate and secret document, that the United States
13 would discontinue her assistance to the Chiang Kai-shek
14 regime if Chiang Kai-shek does not accept the advice
15 of the United States that he enter into negotiations
16 for peace.

17 "If, for any reason, the United States finds
18 it impossible to sign such a document, a definite
19 pledge by some highest authorities will suffice."

20 The three principles of Prince KONOYE as
21 referred to in this paragraph are:

22 "1. Neighborly friendship;

23 "2. Joint defense against communism;

24 150. Exhibit 1070 (T. at 9,896).
25

1 "3. Economic cooperation -- by which Japan
2 does not intend to exercise economic monopoly in
3 China nor to demand of China a limitation in the
4 interests of Third Powers."

5 The following are implied in the aforesaid
6 principles:

7 "1. Mutual respect of sovereignty and
8 territories;

9 "2. Mutual respect for the inherent char-
10 acteristics of each nation cooperating as good neighbors
11 and forming a Far Eastern nucleus contributing to
12 world peace;

13 "3. Withdrawal of Japanese troops from
14 Chinese territory in accordance with an agreement to
15 be concluded between Japan and China;

16 "4. No annexation, no indemnities;

17 "5. Independence of Manchoukuo"¹⁵¹.

18 As has been suggested, a few only of these
19 points proved of notable difficulty. A comparison
20 with the succeeding American draft, that of 21 June,
21 will enable us to isolate the points of difference.
22 The equivalent section of the American proposal and
23 annex are respectively as follows:
24

25 "III. Action toward a peaceful settlement
151. Exhibit 1070 (T. at 9,899).

between China and Japan.

1 "The Japanese Government having communicated
2 to the Government of the United States the general
3 terms within the framework of which the Japanese
4 Government will propose the negotiation of a peaceful
5 settlement with the Chinese Government, which terms are
6 declared by the Japanese Government to be in harmony
7 with the KONOYE principles regarding neighborly
8 friendship and mutual respect of sovereignty and
9 territories and with the practical application of
10 these principles, the President of the United States
11 will suggest to the Government of China that the
12 Government of China and the Government of Japan enter
13 into a negotiation on a basis mutually advantageous
14 and acceptable for a termination of hostilities and
15 resumption of peaceful relations.
16

17 "NOTE (The foregoing draft of Section III
18 is subject to further discussion of the question of
19 cooperative defense against communistic activities,
20 including the stationing of Japanese troops in Chinese
21 territory, and the question of economic cooperation
22 between China and Japan. With regard to suggestions
23 that the language of Section III be changed, it is
24 believed that consideration of any suggested change
25 can most advantageously be given after all the points

1 in the annex relating to this section have been
2 satisfactorily worked out, when the section and its
3 annex can be viewed as a whole.)¹⁵²

4 "Annex:

5 "The basic terms as referred to in the above
6 section are as follows:

7 "1. Neighborly friendship.

8 "2. (Cooperative defense against injurious
9 communistic activities -- including the stationing of
10 Japanese troops in Chinese territory.) Subject to
11 further discussion.

12 "3. (Economic cooperation.) Subject to
13 agreement on an exchange of letters in regard to the
14 application to this point of the principle of non-
15 discrimination in international commercial relations.

16 "4. Mutual respect of sovereignty and
17 territories.

18 "5. Mutual respect for the inherent char-
19 acteristics of each nation cooperating as good neighbors
20 and forming an East Asian nucleus contributing to world
21 peace.

22 "6. Withdrawal of Japanese armed forces
23 from Chinese territory as promptly as possible and
24 in accordance with an agreement to be concluded between
25 152. Exhibit 1092 (T. at 10,009).

1 Japan and China.

2 "7. No annexation.

3 "8. No indemnities.

4 "9. Amicable negotiation in regard to
5 Manchoukuo."¹⁵³

6 29. It can be seen that points 2, 3, 6 and
7 9 in the American list of items are those on which
8 there was difference at this point. The ninth -- the
9 recognition of Manchoukuo, as it stood in the Japanese
10 proposal -- was never a point of contention and may
11 be very shortly dismissed from further detailed
12 consideration. "Recognition of Manchoukuo" had been
13 a term of the original draft proposal presented by
14 Secretary Hull to Ambassador NOMURA¹⁵⁴; the 31 May
15 American counter-proposal included a clause for
16 "amicable negotiation in regard to Manchoukuo"¹⁵⁵.
17 The Secretary had told the Ambassador early in the
18 conversations that the American "position right along
19 was that that was a question between China and Japan.
20 If China were voluntarily, through amicable negotiations,
21 willing to agree to it we had nothing to say".¹⁵⁶ On
22 16 May, according to Mr. Hull's own memorandum of the

23 153. Id. (T. at 10,013).

24 154. Exhibit 1059 (T. at 9,851).

25 155. Exhibit 1078 (T. at 9,946).

156. Testimony of Ballentine (T. 10,999).

conversation,

1 "There was some discussion of the questions
2 of joint defense against communism and the recognition
3 of Manchuria. The Secretary indicated that if China
4 and Japan could agree on the other points listed in
5 the Japanese Annex and Explanation he did not believe
6 that difficulties which might arise over these two
7 points would be such as to prevent an agreement
8 between China and Japan"¹⁵⁷ .
9

10 Number 3 of these items, relating to economic
11 cooperation in China, eventually merged into the
12 discussion of economic activities in the Pacific
13 area generally, and in the world. The remaining
14 items (Number 2, "joint defense against communism"
15 or "cooperative defense against injurious communistic
16 activities -- including the stationing of Japanese
17 troops in Chinese territory"; and number 6, "withdrawal
18 of Japanese troops from Chinese territory in accordance
19 with an agreement to be concluded between Japan and
20 China" or "as promptly as possible" and in accordance
21 with such an agreement) taken together constitute the
22 third of the basic points of contention between
23 Japan and America in the negotiations. A subsidiary
24 question, which came to assume more importance toward
25 157. Memorandum, Exhibit 2873 (T. at 25,714-15).

1 the end, was that of the tendering of good offices,
2 (also expressed as "acting as an introducer") by
3 the United States between Japan and China with the
4 object of ending the China Incident.

5 30. At the 16 May conversation already
6 referred to, Secretary Hull had said that he did
7 not consider the question of joint defense against
8 Communism to involve such difficulties as would prevent
9 an agreement between China and Japan¹⁵⁸. At the
10 same time, he handed the Ambassador an oral statement
11 in which, after reciting receipt of the Japanese
12 counter-proposal and listing the nine points above
13 referred to, he said:

14 "While one or two of the points might
15 present difficulties, it is believed that, if China
16 and Japan could come to agreement on the basis of the
17 other points mentioned, the remaining points with some
18 modification need not present insuperable obstacles.

19 The principles embodied in the KONOYE
20 Statement, as defined in the "Annex and Explanation"
21 as relating to neighborly friendship, joint defense
22 against communism, and economic cooperation free from
23 economic monopoly or limitation of the interests of
24 other countries, could, with some modification, it is
25 158. Ibid.

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believed, be acceptable ¹⁵⁹ .

159. Exhibit 2874 (T. at 25,718).

1 The question of stationing of Japanese troops
2 in China received early and intensive consideration.
3 Of its two aspects, it was the suggestion of leaving
4 troops stationed in specified areas of China after
5 conclusion of a general peace which underwent the most
6 exhaustive exploration and offered the most difficulty
7 in solution; the withdrawal from the territory of
8 China after the peace of Japanese forces other than
9 those to be stationed in the areas specified was dis-
10 cussed relatively little and eventually was solved by
11 Japanese agreement to the American terms. Already on
12 20 May Secretary and Ambassador were discussing the
13 troop-stationing question. Mr. Hull indicated that he
14 did not care at that time to discuss the merits of the
15 Japanese proposals to keep troops stationed in Chinese
16 territory and to undertake joint defense against Com-
17 munist; but he seemed to feel that they should be re-
18 worded -- that it should be "possible to cover these
19 two points under some broader provision, such as a
20 provision which would call for special measures of
21 protection for Japanese nationals and property interests
22 against lawlessness in areas where special measures for
23 safeguarding the rights and interests of nationals of
24 third powers were necessary." ¹⁶⁰ This, he indicated,
25 (160. Memorandum, Ex. 2875, T. 25721.)

1 he considered as likely to be more acceptable to Chiang
2 Kai-shek.

3 On 31 May an American redraft of the proposal
4 was presented. It retained the statement that the
5 question of co-operative defence against Communism was
6 subject to further discussion, but contained the new
7 language that "withdrawal of Japanese military and
8 naval forces from China" should be carried out "as
9 promptly as possible."¹⁶¹ This addition of "naval"
10 forces was said, in an accompanying oral statement, to
11 be a rephrasing to avoid possible ambiguity.^{162.}

12 Simultaneously Secretary Hull handed over another oral
13 statement, in which the undertaking was given that "the
14 Government of the United States will at some appropriate
15 stage prior to any definitive discussion talk over in
16 strict confidence with the Chinese Government the
17 general subject matter involved in the discussions,
18 especially as it relates to China."¹⁶³

19
20 31. It seems to be suggested by the prosecution¹⁶⁴
21 that the question of stationing troops in Inner Mongolia
22 and North China, after the general withdrawal of Japa-
23 nese forces, was newly raised by Japan in June. Such
24 was of course not the fact; not only the Japanese

25 (161. Ex. 1078, T. 9945.

162. Ex. 1079, T. 9951.

163. Ex. 1080, T. 9960.

164. Summation, SG-79, T. 39615.)

position that it must have the right of stationing
1 troops, but these specific named areas, had been ex-
2 plicit in the conversations from the beginning, and the
3 United States authorities had long since heard and,
4 apparently, understood the Japanese requirement and its
5 reason. Thus, we have seen, at the conversation of 20
6 May Secretary Hull had adverted to these questions;¹⁶⁵
7 at a further conversation of the 28th Ambassador NOMURA
8 specifically stated, in answer to Mr. Hull's questioning,
9 that the general "evacuation would not include troops
10 retained in China under the provision of co-operative
11 defense against Communistic activities. He contemplated
12 an arrangement being negotiated with China similar to
13 the Boxer Protocol under which Japanese troops would
14 be stationed for an indefinite period in North China
15 and Inner Mongolia. The Ambassador said he could not
16 indicate approximately how many troops it was proposed
17 to station in China under such an arrangement or define
18 precisely the areas in which the arrangement would be
19 operative."¹⁶⁶
20

21 The witness Ballantine stated that the first
22 official intimation which the Department of State had of
23 the extent of the Japanese claims to the right to station
24 troops in China was given in conversation with Colonel
25

(165. Loc. cit. supra n160.
166. Memorandum, Ex. 1077, T. 9936.)

167

1 IWAKURO, a military adviser to Ambassador NOMURA, but
 2 there seems to be no clear evidence of the date of those
 3 conversations -- they were apparently soon after 12 May.
 4 At any rate, the colonel did make it clear that Japa-
 5 nese troops were to remain in North China and Inner
 6 Mongolia to defend against a Communist menace, as well
 7 as for the additional purpose of maintaining order in
 8 areas which were adjacent to Japan geographically. ¹⁶⁸
 9 The Communist activities, the witness admitted, did
 10 exist, but he "would not want to pass on" whether the
 11 Central Government of China had been unable to maintain
 12 order. ¹⁶⁹ Apparently the State Department did not ob-
 13 ject to the basic idea of Japan's maintenance of troops
 14 in China to protect whatever legitimate interests she
 15 might have there -- there was some question what
 16 interests could be called "legitimate," ¹⁷⁰ and the
 17 United States was indeed desirous of doing away, gradu-
 18 ally, with the rights granted to foreign powers by the
 19 Boxer Protocol and other treaties to maintain troops in
 20 China; ¹⁷¹ but in general there was no thought on the
 21 American side of insisting on immediate, unconditional
 22 Japanese withdrawal; ¹⁷² Japan was to be allowed a

- 24 (167. T. 10909.
 168. T. 10909-10.
 25 169. Ibid.
 170. T. 10910.
 171. T. 10907.
 172. T. 10913.)

1 reasonable time under existing conditions to effect
2 evacuation of her large forces in China.¹⁷³ The
3 difficulty in the troop-stationing question was, as
4 usual, in the details: The United States was disturbed
5 over Japanese vagueness concerning the time-limit for
6 the stationing of the troops after the peace, the areas
7 in which they were to be stationed, and the numbers of
8 troops involved. But, "subject to further discussions"
9 (as the American counter-proposal of 31 May had it) of
10 these details, America had no objection to the Japanese
11 retention of troops in China.

12 32. From the Japanese position on this ques-
13 tion as expressed in the latter half of May, said
14 Ballantine, they never receded.¹⁷⁴ We shall, neverthe-
15 less, see as we trace the negotiations that in the three
16 particulars of length of time of stationing troops,
17 areas of stationing, and numbers of troops, Japan did as
18 time passed make her proposals more definite and, for the
19 most part, more moderate.

20
21 An important meeting among members of the Japa-
22 nese Embassy staff and representatives of the State
23 Department took place on 4 June.¹⁷⁵ It was made clear,
24 in the course of discussion of revised clauses which the
25 (173. T. 10911.
174. T. 10909.
175. Memorandum, Ex. 1083, T. 9964-78.)

1 Japanese had proposed, that notwithstanding Japan's
2 policy had been not to regard the Chungking Government
3 as more than a regional regime, she did intend in pur-
4 suance of the proposed understanding to treat with
5 Chungking for settlement of the China Incident, and that
6 Japan expected to leave it to the Chinese people to
7 decide whether the Nanking or the Chungking regime or a
8 coalition of the two should be the eventual government
9 of China. ^{176.} It was made clear also that the American
10 proposal of providing by the agreement for withdrawal of
11 naval as well as military forces was accepted, with only
12 a phraseology to be settled. ¹⁷⁷ Nevertheless, two days
13 later an oral statement presented by Secretary Hull
14 contended that the proposed revisions of 4 June, with
15 others unspecified, had "gradually narrowed down" the
16 Japanese proposal of 12 May. ¹⁷⁸ So far as concerns the
17 China question, the "narrowing" process is not evident,
18 nor is it apparent how the changes in wording in the two
19 drafts would, especially in view of the explanations
20 given at the 4 June meeting, amount to avoiding, as the
21 oral statement charged, the giving of a "clear indication
22 of an intention to place Japan's relations with China on
23 a basis which in the opinion of the Government of the
24

25 (176. Id., T. 9969.

177. Id., T. 9972.

178. Ex. 1085, T. 9982.)

1 United States would contribute to a lasting peace and
2 thus to future stability in the Far East." ^{179.} This
3 language seems again to represent the American concern
4 with the general in preference to the particular.

5 Some ten days later -- on 15 June -- the Japa-
6 nese revised counter-proposal was presented. ¹⁸⁰ The
7 Japanese position on the China question as stated in
8 this draft need not be set out here, differing as it
9 does only verbally from that of the 12 May proposal. On
10 21 June, however, the United States also produced a
11 revised proposal ¹⁸¹ -- that destined to be its last
12 in this series of discussions -- together with an oral
13 statement. ¹⁸² The section of the proposal relating to
14 the China question is with one exception in the identi-
15 cal words of the preceding United States draft, that of
16 31 May. The exception is an addition to the note on
17 further discussion of the problem of troop-stationing,
18 suggesting that questions of verbal change in the sec-
19 tion can advantageously be postponed to solution of the
20 details of the problem. The oral statement is a peculiar
21 document. It now expressed for the first time "mis-
22 giving" over the desire of Japan to retain the right of
23 stationing its troops in Inner Mongolia and North China
24 "as a measure of co-operation with China in resisting
25

(179. Id., T. 9983.

180. Ex. 1087, T. 9988-97.

181. Ex. 1092, T. 10005.

182. Ex. 1091, T. 10001.

1 Communistic activities;" while the American Government
2 had "given careful thought" to the question, and did not
3 "desire to enter into the merits" of it, it felt that
4 the liberal policies to which it was committed would not
5 permit it "to associate itself with any course" incon-
6 sistent therewith, which this proposal, as affecting
7 "the sovereign rights of a third country," apparently
8 was considered to do.^{183.} One might suppose -- were it
9 not for the evidence above cited -- that the United
10 States now for the first time heard the suggestion of
11 retention of Japanese troops in North China and Mongolia,
12 and was shocked by it. But having in mind that evidence,
13 from which it appears that this point had been explicitly
14 mentioned, without apparent objection by the American
15 representatives but rather with discussion of the
16 phraseology most suitable for expressing it, as early
17 certainly as 20 May and perhaps much earlier, it is
18 difficult to understand the American position. The
19 position is, in fact, self-contradictory; for despite
20 this broad hint that the United States would reject any
21 request by Japan that she be allowed to retain troops in
22 China, her draft proposal of the same date mentions the
23 matter as "subject to further discussion of the question
24 of Communistic activities, including the stationing of
25 (183. Id., T. 10002.)

1 Japanese troops in Chinese territory."

2 33. There seems to have been no new development
3 in this matter until, on 6 August, Ambassador NOMURA
4 handed to Secretary Hull a further Japanese effort, in
5 the form of supplementary proposals to be incorporated,
6 if agreed upon, into the general agreement. They dealt
7 largely with the Indo-China question, newly arisen
8 since the last proposals had been discussed, but con-
9 tained the provision that "the Government of the United
10 States will use its good offices for the initiation of
11 direct negotiations between the Japanese Government and
12 the Chiang Kai-shek regime for the purpose of a speedy
13 settlement of the China Incident."¹⁸⁴ On 28 August
14 Admiral NOMURA, as he reported to Foreign Minister
15 TOYODA, had a talk with Secretary Hull, at which time
16 the Secretary further qualified his original statement
17 that he had no interest in influencing the terms of
18 Sino-Japanese settlement -- provided they were agreeable
19 to the parties -- by pointing out that the United States
20 could not simply, as requested by Japan, use its good
21 offices to restore peace; it must be thoroughly familiar
22 with the proposed Sino-Japanese negotiations in order to
23 be able to persuade China to agreement.¹⁸⁵

24
25 The Japanese proposal of 6 September¹⁸⁶ is

(184. Ex. 2885, T. 25763. 186. Ex. 1245-D, T. 10778.
185. Ex. 2893, T. 25795.

1 alleged by the prosecution (adopting the conclusion of
2 Ballantine) to have been "much narrower than the
3 assurances" given on 28 August.¹⁸⁷ We need not debate
4 this point with Mr. Ballantine, for it chances that the
5 Ambassador of the United States in Tokyo, Mr. Grew, has
6 made for us an analysis of the proposal. The proposal
7 was handed to the Ambassador by Foreign Minister
8 TOYODA on the 4th,¹⁸⁸ and after study of it he reported
9 his views to the State Department.¹⁸⁹ His conclusion
10 was that in respect to the China question "the commit-
11 ments contained in the latest Japanese proposal, if
12 implemented, would fulfill this requirement," of "the
13 cessation on the part of Japan of its progressive acts
14 of aggression."¹⁹⁰
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25 (187. T. 10778.
188. Ex. 2895, T. 25801-4.
189. Ex. 2896, T. 25805-8.
190. Id., T. 25807.)

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1 It should be supererogatory to point out
2 that the hypothesis upon which negotiations were con-
3 ducted at all was that of "implementation" of such
4 commitments as might eventually be agreed upon, but
5 in view of certain peculiar developments later in the
6 negotiations this may be mentioned. It might be
7 remarked also, in passing, that Ambassador Grew showed
8 himself quicker than the authorities in Washington
9 to realize that in entering into a settlement with
10 Japan the United States "would always retain in its
11 hands the leverage which would contribute to Japanese
12 implementation of its commitments. If an adjustment
13 of relations is to be achieved some risk must be run,
14 but the risk taken in the pursuance on our part of a
15 course which would not only provide inducements to
16 the Japanese to honor their undertakings but would
17 also leave to the United States Government a certain
18 leverage of compulsion would appear to be relatively
19 less serious than the risk of armed conflict entailed
20 in the progressive application of economic sanctions
21 which would result from a refusal to accept these
22 proposals."¹⁹¹
23

24 This has a special interest in view of the
25 increasing tendency in Washington as the negotiations
progressed to consider that any commitments which

191. Id. (tr. at 25,807-8).

1 Japan might make would have no value in any event --
2 but that is to anticipate.

3 The stiffening in the American attitude
4 which had been growing since June was remarked upon
5 by Ambassador NOMURA in reporting to Foreign Minister
6 TOYODA the American reception of the proposal of 6
7 September. The Americans had recently, he reported
8 on 12 September, shown a tendency to discuss a two-
9 year limit for the evacuation of all troops from China. 192

10 Meanwhile, for use in explanation of the current
11 proposals. Foreign Minister TOYODA sent instructions
12 to the Embassy, handing a copy of them to Ambassador
13 Grew on 13 September. 193. The further clarification
14 of the China problem therein contained was this:

15 "For the purpose of preventing Communistic
16 and other subversive activities threatening the safe-
17 ty of both Japan and China and also of maintaining
18 the peace and order in China, Japan and China will
19 cooperate in the form of common defense. The execu-
20 tion of the common defense by Japan and China will
21 contain the stationing of Japanese troops for a cer-
22 tain period in accordance with the agreements between
23 both countries. The Japanese troops which have been
24 sent to China with the object of executing the China
25

192. Ex. 1,139 (tr. at 10,225)

193. Ex. 2,899 (tr. at 25,816-19)

1 affairs will be withdrawn when the said affairs have
 2 been settled."¹⁹⁴

3 Some doubt having apparently arisen in the
 4 minds of the American authorities concerning Japan's
 5 desire for American good offices in assisting the
 6 settlement of the China Incident, the Foreign Minis-
 7 ter gave assurance to Mr. Grew, on 13 September and
 8 again on the 22d, that Japan continued to wish for the
 9 rendition of such good offices. In connection with
 10 that matter, on the latter occasion he handed to the
 11 Ambassador a copy of the basic terms for Sino-Japanese
 12 peace.¹⁹⁵ Still again, on the 23d, Admiral TOYODA
 13 transmitted to the American Embassy in Tokyo a full
 14 explanation of the reasons which constrained the Jap-
 15 anese authorities to the view that retention of troops
 16 in some areas of China after the conclusion of peace
 17 was a necessity,¹⁹⁶ an explanation of conditions in
 18 China (as apposite today as in 1941) expressed with
 19 a force which could hardly be gainsaid the importance
 20 to Japan of a stable China.

21 34. On 25 September another Japanese proposal
 22 was presented,¹⁹⁷ one which had an odd reception.
 23 We have already seen that Secretary of State Hull on 2
 24 October handed to the Ambassador of Japan an elaborate
 25

194. Id. (tr. at 25,817-18)

195. Ex. 2,901 (tr. 25,823-26)

196. Ex. 2,902 (tr. 25,827-30)

197. Ex. 1,245-E (tr. 10,764)

1 oral statement reviewing the course of the negotiations
2 for some time previous. Yet this note makes no men-
3 tion whatever of the proposal of 25 September, one
4 week earlier, confining itself to an analysis of that
5 of 6 September. Moreover, it indicates that Secretary
6 Full had now come full circle around from his original
7 position that the matter of stationing Japanese troops
8 in China was "subject to further discussion," that as
9 Ballantine says, they "were prepared to explore the
10 subject of terms of withdrawal." ¹⁹⁸ For he now regards
11 the matter thus:

12 "This Government has noted the views of the
13 Japanese Government in support of its desire to sta-
14 tion troops for an indeterminate period in certain
15 areas of China. Entirely apart from the question of
16 the reasons for such a proposal, the inclusion of such
17 a provision in the proposed terms of a peaceful settle-
18 ment between Japan and China at a time when Japan is
19 in military occupation of large areas in China is
20 open to certain objections. For example, when a
21 country in military occupation of territory of another
22 country proposes to the second country the continued
23 stationing of troops of the first country in certain
24
25 198. Tr. 10,913.

1 areas as a condition for a peaceful settlement and .
2 thus for the withdrawal of the occupationary forces
3 from other areas, such procedure would seem to be out
4 of keeping with the progressive and enlightened
5 courses and principles which were discussed in the
6 informal conversations and thus would not, in the
7 opinion of this Government, make for peace or offer
8 prospects of stability."¹⁹⁹

9 Then did the continuance of troops in areas
10 of China as part of the settlement become inconsistent
11 with the principles discussed? Not by the American
12 proposal of 21 June, when it was "subject to dis-
13 cussion"; and this remained, according to Ballantine,
14 "up to the time of our November 26 proposal, our last
15 complete proposal."²⁰⁰ If the considered American
16 view actually was, as indicated by this oral state-
17 ment, that Japanese troop-stationing in China was
18 unacceptable, why were negotiations continued?

19 35. At any rate, it was evident by this
20 time that the troop-stationing question was by all
21 odds the greatest obstacle to agreement -- Admiral
22 NOMURA, in fact, had a report on 3 October from which
23 it might be inferred that both President Roosevelt
24

25 199. Ex. 1245-G (tr. at 10,803-4)
200. Tr. 10,884.

1 and Secretary Hull regarded it as the only remaining
2 issue.²⁰¹ The available evidence makes it question-
3 able whether thenceforward the State Department did
4 really negotiate on the question at all; further
5 Japanese efforts thereafter were given scant considera-
6 tion, and it is hardly to be wondered at that the
7 authorities in Tokyo came gradually to feel a lack
8 of sincerity in the American attitude.²⁰²

9 After receipt of the oral statement of 2
10 October "the conspirators presented new formulas for
11 limited special problems," we are told on the authority
12 of Ballantine.²⁰³ No glimmer of a suggestion concern-
13 ing these "new formulas" is vouchsafed by the evidence.
14 Or perhaps one is. On 13 October Minister WAKASUGI
15 called on Under-Secretary of State Welles to discuss
16 the China question and to say that Japan was willing
17 to evacuate all of its troops from China -- all of them.
18 he said twice.²⁰⁴ If Mr. Hull had the idea that Japan
19 could, if sufficiently pressed, be brought to withdraw
20 all her troops from China immediately, Mr. Welles was
21 more practical; when the Minister said that of course
22 it was impossible after four years of warfare to with-
23 draw the entire military force in twenty-four hours,
24 his understanding comment was that "of course nobody
25

201. Ex. 2906 (tr. at 25,845)

202. Memorandum, Ex. 2927 (tr. 25,981)

203. Summation, SG-103 (tr. 39,643); cf. test. of Ball-
antine, tr. 10,809

204. Memorandum, Ex. 2911 (tr. 25,856)

1 expected miracles in this modern age." ²⁰⁵ At any
2 rate, says witness Ballantine, in these mysterious "new
3 formulas" there was discernable no evidence that Japan
4 "was moving even one step toward" peace or "receding
5 even one step from" her sinister objectives. ²⁰⁶ No
6 "formula," of course, could furnish such evidence --
7 though he seems not to consider what might have been
8 the effect of actions implementing any formulas agreed
9 upon.

10 36. On 16 October 1941 the KONOYE Cabinet
11 fell. The direct and proximate cause of this change
12 of government was the question of the stationing of
13 troops in China in relation to the Japanese-American
14 negotiations, as is explained by Prince KONOYE himself
15 in his memoirs. ²⁰⁷ In a last effort to save the ne-
16 gotiations -- and thus the Cabinet -- Foreign Minister
17 TOYODA had prepared and submitted to Premier KONOYE
18 his estimate of what would be necessary to secure
19 American understanding on the troop-stationing problem. ²⁰⁸
20 It proved impossible in the end to secure internal
21 agreement to the making of such concessions as he
22 thought essential, and the cabinet resignation came
23 about in consequence.
24

25 205. Id. (tr. at 25,857).

206. Tr. 10,810

207. Ex. 2914 (tr. 25,868-73); see also Ex. 2919 (tr.
25,939-40).

208. Ex. 2916 (tr. 25,912)

1 Upon the formation of the TOJO Cabinet the study of
2 the entire question of the Japanese-American negotia-
3 tions was made the first order of business. Quite
4 naturally, it being understood that agreement in
5 principle had been reached on the other main points,
6 these discussions centered about the problem of the
7 stationing of troops in and their withdrawal from
8 China.

9 The first fruit of this process of reconsidera-
10 tion was a new Japanese proposal, known as "Proposal
11 A," which was presented to Secretary Hull on 7 Novem-
12 ber ²⁰⁹ and to President Roosevelt on the 10th. ²¹⁰

13 This proposal A has been the subject of wide difference
14 of opinion. By it Japan had, as the prosecution
15 asseverate, "not moved in the slightest from her
16 original position." ²¹¹ The defendants, on the other
17 hand, all felt that it represented substantial and
18 important concessions from the earlier Japanese stand. ²¹²

19 Ballantine failed altogether to mention it in his
20 testimony. For attaching no importance to Proposal A
21 he has two reasons: ²¹³ that it raised a new question,
22 that of Hainan Island; and that it was known from the
23 contents of Tokyo's intercepted telegrams not to have
24

25 209. Ex. 1246 (tr. 10,918).

210. Memorandum, Ex. 2927 (tr. 25,974).

211. Summation, SG-120 (tr. 39,660)

212. ~~Testimony of Yamamoto (tr. 25,938-49)~~

213. Tr. 10,916

1 been made in good faith. This latter point we shall
2 come to presently; but now we must examine the docu-
3 ment carefully to see whether it represents a con-
4 cession on the question of troop-stationing.

5 37. Proposal A was, as has been mentioned,
6 not a completely redrafted proposal; it consisted of
7 three clauses to be substituted in or added to the 25
8 September draft, together with various explanations
9 which the Ambassador was to make in one form or another
10 to the United States authorities. The newly-rewritten
11 clauses are quite brief, and it will be convenient to
12 see them in their entirety before attempting to dis-
13 sect the proposal. It is as follows:

14 "Disposition of Japanese Forces

15 "(A) Stationing of Japanese forces in China
16 and the withdrawal thereof:

17 "With regard to the Japanese forces that
18 have been dispatched to China in connection with the
19 China Affair, those forces in specified areas in North
20 China and Mengchiang (Inner Mongolia) as well as in
21 Hainan-tao (Hainan Island) will remain to be stationed
22 for a certain required duration after the restoration
23 of peaceful relations between Japan and China. All
24 the rest of such forces will commence withdrawal as
25 soon as general peace is restored between Japan and

1 China, and the withdrawal will proceed according to
2 separate arrangements between Japan and China and
3 will be completed within two years with the firm
4 establishment of peace and order.

5 "(B)" Stationing of Japanese forces in French
6 Indo-China and the withdrawal thereof:

7 "The Japanese Government undertakes to guar-
8 antee the territorial sovereignty of French Indo-
9 China. The Japanese forces at present stationed there
10 will be withdrawn as soon as the China affair is
11 settled or an equitable peace is established in East
12 Asia.

13 "Principle of Non-Discrimination"

14 "The Japanese Government recognizes the prin-
15 ciple of non-discrimination in international commer-
16 cial relations to be applied to all the Pacific areas,
17 inclusive of China, on the understanding that the
18 principle in question is to be applied uniformly to
19 the rest of the entire world as well."
20

21 The prosecution have been pleased to charac-
22 terize Proposal A as "exceedingly and purposely vague
23 on the question of evacuation of troops from China
24 and French Indo-China." ²¹⁴ On the contrary, it is

25 214. Summation, SG-117 (tr. 39,657)

1 submitted, this document and the accompanying ex-
2 planations (which together constitute the proposal)
3 demonstrably do for the first time in the course of
4 the negotiations limit Japan's demands in the three
5 particulars which made up "the question of evacuation
6 of troops from China": the area, the duration, and the
7 number of troops.

8 38. First, as to the area. By Proposal A
9 Japan was prepared for the first time to state definite-
10 ly the areas in which would be stationed the troops to
11 remain in China after the conclusion of a Sino-Japan-
12 ese peace. Certainly, "in specified areas in North
13 China and Mengchiang (Inner Mongolia) as well as in
14 Hainan-tao (Hainan Island)" is still general enough;
15 and until the areas had actually been "specified" the
16 United States might understandably remain unenthusi-
17 astic. But the remarkable thing is that, although
18 this specification must certainly have been demanded
19 if any negotiation was to be conducted, no such demand
20 was made. There is, I repeat it, no indication that
21 such a demand was ever made -- or, therefore, that
22 if made it would not have been complied with. On the
23 other hand, here for the first time during the nego-
24 tiations is stated specifically in a formal proposal
25 the condition of retention of troops in Hainan; which

Ballantine says "was entirely a new question, so
1 instead of bringing us nearer it injected in a new
2 question which left us just where we were."^{215.} Even
3 had the Hainan question been as entirely new on 7
4 November as Mr. Ballantine puts it, no doubt it would
5 be correct to say just as he says, that it left the
6 matter where it was -- certainly it does not in any
7 way represent retrogression that Japan has for the
8 first time named all the areas where she wishes her
9 troops to be stationed. Interestingly, however, this
10 is not the first mention of Hainan which had come to
11 the attention of the American authorities in connec-
12 tion with the troop-stationing problem. The question
13 was actually in November 1941 as old in the negotia-
14 tions as Ballantine brands it new. The original
15 Japanese draft proposal of 12 May had referred, in
16 its Section III, to the United States' acknowledging
17 the elaboration of the KONOYE Principles as set forth
18 in the Treaty of Basic Relations with Nanking China of
19 30 November 1940.^{216.} That Treaty contained this
20 language:
21

22 "The Government of the Republic of China
23 has agreed to cooperate intimately between the two
24

25 215. Tr. 10,916
216. Ex. 464 (tr. 5318).

1 countries in planning development and production of
 2 special resources, especially strategical resources
 3 necessary for national defense in Amoy, Hainan Island
 4 and the adjoining islands thereof."²¹⁷

5 These terms were communicated to the United
 6 States Government at some time during the course of
 7 the negotiations;²¹⁸ Ambassador NOMURA in fact
 8 intimates, in his report of 18 April to Premier KONOYE,
 9 that the Hainan question might even have been dis-
 10 cussed in the course of the preliminary conversations
 11 which resulted in the original private draft proposal
 12 of 9 April. Speaking of the general subject of "joint
 13 defense against Communism" and "withdrawal of troops,"
 14 he mentions that in the draft "no stipulation is in-
 15 serted -- though it had at first been intended to
 16 insert one -- concerning our special position in North
 17 China and Mongolia, in view of the delicate question
 18 of Hainan Island." The withdrawal of troops, he says,
 19 will be so carried out as not to conflict with the
 20 Treaty of Basic Relations.²¹⁹ (The Department of
 21 State, incidentally, was informed from the spring of
 22 1941, through interception, of the contents of the
 23 Embassy's messages to and from the Foreign Ministry).²²⁰
 24

25 217. Ex. 465 (tr. at 5327).

218. Ex. 3456 (tr. 33,192); test. of def. MUTO (tr. 33,194)

219. Ex. 3871 (tr. 24,688-9)

220. Testimony of Ballantine (tr. 10,092).

The position that the question of Hainan came as a surprise to the Department of State in November 1941 seems therefore difficult to maintain. The surprise should have been that Amoy, mentioned with Hainan in the Treaty, above quoted, the terms of which were known to them, had been dropped. Quite aside from that, there is no apparent reason why if new it should have been so alarming to Mr. Ballantine; when the United States' position was being repeatedly advanced by the putting forward of new requirements--most of which were eventually accepted by the Japanese--it is hard to see why the raising of a single new question from the Japanese side must necessarily have had such a final chilling effect on the negotiations. We are, indeed, justified in doubting Mr. Ballantine's estimate of the importance which was contemporaneously attached to this point; for it is most noteworthy that no suggestion has been made from any source that the Department of State either put any questions, or so much as commented upon the Hainan matter, whether at the time that Proposal "A" was tendered or at any time thereafter. This conduct is consistent with the State Department's having already had knowledge of the Hainan point, and attaching no special importance to it; it is inconsistent with their having first

1 heard of it, with surprise and disappointment, on
2 7 November. It is not consistent with the role of
3 disappointed surprise that no State Department
4 official ever said to the Japanese Ambassador, "Ah,
5 there you've raised a difficult point," ever suggested
6 to the Ambassador that importance of the Hainan
7 question which has not been explained to the Tribunal
8 by any witness or any account of the Department of
9 State.

10 39. Next, as to time. For the first time
11 in the course of the negotiations, by Proposal "A"
12 Japan placed a definite limit on the time for with-
13 drawal from China of troops generally after the
14 conclusion of peace. As the prosecution put it,
15 "Japan merely proposed to withdraw her troops,
16 except in certain areas, only within two years after
17 peace was established. Certainly, this cannot be
18 deemed a concession."²²¹ What this minimizing
19 argument overlooks is that it was "only within two
20 years" that the United States had demanded withdrawal,
21 when it had first injected the question of this time-
22 limit into the negotiations some months before,²²²
23 hence that this clause of Proposal "A" represented
24

25
221. Summation, Section G-120 (Tr. 39661).

222. Loc. cit. supra n192.

1 complete acceptance of another American position,
2 and as such must certainly "be deemed a concession."

3 The more important point is that nothing is
4 stated on the face of Proposal "A" concerning other
5 details of the withdrawal and stationing of troops--
6 to-wit, the duration for which the remaining troops
7 would be stationed and the number of the troops to
8 remain behind. These points, however, were compre-
9 hended within Ambassador NOMURA's instructions for
10 explanation to the United States, and they were
11 explained by him, upon inquiry by the Secretary of
12 State, to the extent of the Secretary's inquiry. It
13 will have been noted that the vagueness of the dura-
14 tion of the troop-stationing had been one of the
15 points, perhaps the point, most alarming to the
16 Secretary; in his oral statement of 2 October, for
17 example, he had referred with disapproval to the
18 Japanese Government's "desire to station troops for
19 an indeterminate period in certain areas of China."²²³
20 Appreciating this point, the new Japanese cabinet had
21 concentrated a large part of the effort which resulted
22 in the drawing up of Proposal "A" upon the attempt
23 to reach an agreement on the limitation of time.²²⁴

25 223. Ex. 1245-G, Tr. 10803-4.

224. Testimony of YAMAMOTO (Tr. 25938-41) and
TOGO (Tr. 35685-87).

1 As the evidence has shown,²²⁵ it had not been possible
2 to reach any agreement, either on the 5-year term
3 proposed in his time by Foreign Minister TOYODA,²²⁶
4 or on any other definite period. For the first time,
5 however, there was acceptance on the Japanese side
6 of the principle that the stationing of troops should
7 be not indefinite, but for a limited period²²⁷ --
8 theretofore not even the principle had been unquali-
9 fiedly agreed to -- and an approximate term was set
10 as a working basis for negotiations on that new
11 postulate. The fact of this major concession's
12 having been now made for the first time is so in-
13 disputable that Ballantine himself admits that it is
14 "possibly so".²²⁸ It is noteworthy that only after
15 strong insistence had the Government been able to
16 extort from the military high command this concession,
17 refusal to give which had resulted in the downfall of
18 the KONOYE Cabinet,²²⁹ and its significance was not
19 doubtful at the time. It was pointed out to Amba-
20 sador NOMURA, in the telegram from Foreign Minister
21 TOGO transmitting Proposal "A" to him, that "in view
22 of the strong American opposition to the stationing
23

24 225. Ibid.

25 226. Ex. 2916, Tr. 25916.

227. Loc. cit. supra N224.

228. Tr. 10928.

229. Ex. 2914, Tr. 25868.

1 for an indefinite period, it is proposed to dismiss
2 her suspicion by defining the area and duration of
3 the stationing."²³⁰ On the other hand, it was recog-
4 nized that public proclamation of the length of time
5 for which the troops would remain in the specified
6 areas of China might well defeat the purpose of
7 their being stationed there, and the Ambassador was
8 accordingly directed "to abide, at this moment, by
9 the abstract term 'necessary duration,' and to make
10 efforts to impress the United States with the fact
11 that the troops are not to be stationed either per-
12 manently or for an indefinite period," only upon
13 inquiry saying that the "approximate goal" for with-
14 drawal was to be 25 years.²³¹

15 This was impressed by Ambassador NOMURA
16 upon Mr. Hull -- "I pointed out . . . that it was no
17 longer an indefinite stationing that we proposed"²³² --
18 and the Secretary expressed his "appreciation of the
19 clarification." He could scarcely have done less, in
20 view of the extreme significance of the point, which
21 had been the crux of six months of negotiation. It
22 may however be objected that the detail of this

24 230. Ex. 2925, Tr. 25969.

25 231. Id. (Tr. 25970).

232. Ex. 2929, Tr. 25994, as corrected.

1 acceptance of the principle of limitation upon the
2 stationing of troops, the approximate goal, was
3 expressed in neither the written clauses of Proposal
4 "A" nor the Ambassador's explanation, was only so to
5 say held in petto by Ambassador NOMURA, not confided
6 to the representatives of the United States, and as
7 a matter of which they knew nothing represented no
8 concession of anything. This argument would be per-
9 fectly valid were it not for one thing -- that
10 (subject to what is to be said on the matter
11 presently)²³³ the United States authorities were
12 reading the Ambassador's correspondence. They there-
13 fore knew that he was, by the instructions sent him
14 concerning Proposal "A," armed with something more
15 concrete than had ever before been mentioned, upon
16 the basis of which to "impress the United States with
17 the fact" that the troop-stationing was not to be
18 indefinite: for with Proposal "A" he was given the
19 note, "in case the United States inquires into the
20 length of the necessary duration, reply should be
21 made to the effect that the approximate goal is
22 25 years."²³⁴ Now, twenty-five years may have been
23 a reasonable period in the circumstances, or it may

25 233. *Infra*, Section 41, et seq.

234. *Id.* (Tr. 25968).

1 have been unreasonable; but that is not the question
2 here. The curious fact is that the American author-
3 ities, who had such strong opposition to indefinite
4 stationing and were apparently so insistent on a
5 definite limit being announced, had not sufficient
6 interest in the matter to inquire into the point --
7 and this though they knew that the Ambassador's
8 instructions would require him to say in answer to
9 inquiry that which would represent abandonment of the
10 claim to indefinite stationing, acceptance of the
11 principle of limitation in time. They did not ask;
12 wherefore the Ambassador never reached the point of
13 mentioning the 25-year "approximate goal." We can
14 only conclude, it is submitted, that they did not
15 find the period objectionable; had they done so, they
16 had only to ask, have it out in the open, and state
17 their objections to it -- perhaps it would have been
18 subject to negotiation. As it was, they did not
19 negotiate; and in point of fact, the witness Ballantine,
20 pressed to say whether the 25-year period was in itself
21 considered unreasonable by the State Department,
22 tacitly confessed that it was not by seeking refuge
23 in the evasion that "we didn't consider each of these
24 small points individually. We considered the
25

1 proposition as a whole."²³⁵ Nor does Secretary
2 Hull's assurance to the Ambassador on the 12th --
3 with knowledge, it must be remembered, of the
4 substance of Ambassador NOMURA's instructions -- that
5 he appreciated the "clarification that no indefinite
6 stationing of troops" was intended,²³⁶ sound like
7 objection to the 25-year term. There is in fact
8 evidence from which we may feel quite certain on this
9 point. Considerably later -- by 23 November --
10 Ambassador NOMURA received one of those "reliable
11 reports" of his which usually meant a Cabinet
12 minister²³⁷ to the effect that: "Hull is of the
13 opinion that the stationing of troops for such
14 period as may be necessary is in effect indefinite
15 stationing; that there is no objection if the dura-
16 tion is set for four or five years, providing that
17 the further decision be made in accordance with the
18 situation at the end of that period; but that the
19 indefinite stationing is contradictory to the prin-
20 ciples of non-annexation and respect for sovereignty.²³⁸
21 Mr. Hull's idea was five years, Admiral NOMURA's was
22 (as Mr. Hull knew) twenty-five; the condition which
23

24 235. Tr. 10927.

25 236. Ex. 2929, Tr. 25994, as corrected.

237. Ex. 2933, Tr. 26004.

238. Ex. 2946, Tr. 26049.

makes "negotiations."

1
2 40. And, finally, some days after the
3 presentation of Proposal "A," the question of the
4 number of troops to be stationed in China after the
5 peace also was clarified by the Japanese. At the time
6 that the proposal was handed to the Secretary of
7 State, he had asked "in what ratio withdrawal and
8 stationing would be." The Ambassador replied that
9 "the greater portion of the troops would be withdrawn."²³⁹
10 Seemingly the State Department had somewhat more
11 interest in this point than in those of the duration
12 and the area of the stationing, for it was reverted
13 to later. At a conversation with Mr. Hull of
14 18 November, Admiral NOMURA, having apparently
15 obtained more definite instructions, in response to
16 a question "how many soldiers the Japanese wanted to
17 retain in China," answered, "that possibly 90 per cent
18 would be withdrawn."²⁴⁰
19

20 41. Mr. Ballantine's explanation for this
21 almost total failure of the State Department to mani-
22 fest interest in Proposal "A" is founded primarily on
23 his conviction that, as shown by interception of Tokyo-
24 Washington messages, "the representations being made

25 ²³⁹. Ex. 2928, Tr. 25989.

²⁴⁰. Memorandum, Ex. 2940, Tr. 26027.

1 to us . . . were not being made in good faith.²⁴¹

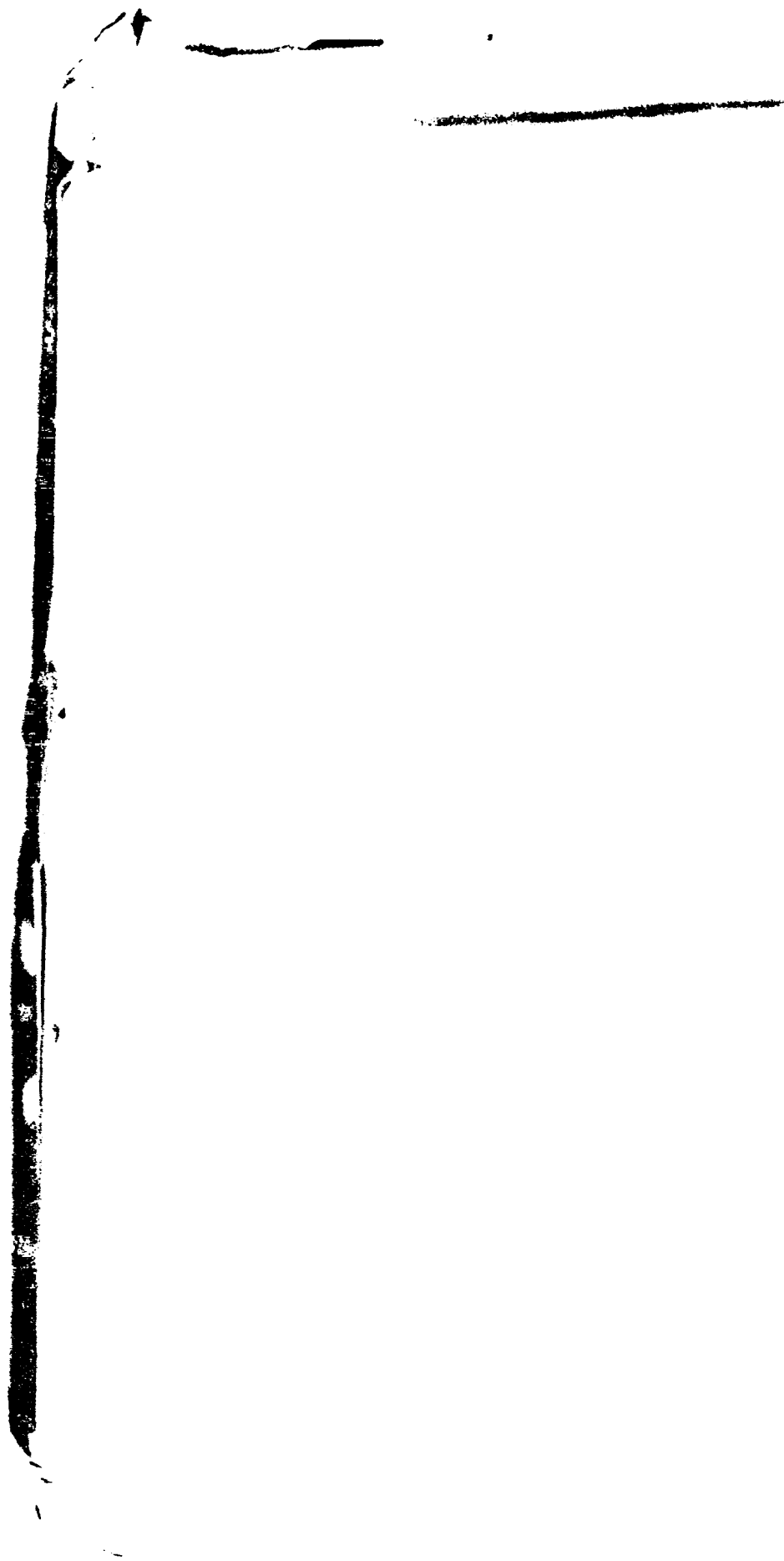
2 These intercepted telegrams, which endowed the
3 Department of State with the attributes proper to a
4 clairvoyant, seem to have played such a decisive
5 role in forming the attitude of the Department that
6 they must be subjected to a brief scrutiny.

7 THE PRESIDENT: We will adjourn until half-
8 past nine Monday next.

9 (Whereupon, at 1600, an adjournment
10 was taken until Monday, 15 March 1948, at
11 0930.)

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25 241. Tr. 10916.



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42 305

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15 MARCH 1948

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Monday, 15 March 1948

- - -

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE JARANILLA, Member
from the Republic of the Philippines, not sitting from
0930 to 1200; HONORABLE JUSTICE HENRI BERNARD, Member
from the Republic of France, not sitting from 1500
to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, MATSUI, SHIGEMITSU,
5 S. IRATORI and UMEZU who are represented by counsel.
6 The Sugamo Prison Surgeon certifies that they are
7 ill and unable to attend the trial today. The cer-
8 tificate will be recorded and filed.

9 With the Tribunal's permission the accused
10 KAYA will be absent from the courtroom the entire
11 day conferring with his counsel.

12 Major Blakeney.

13 MR. BLAKENEY: I resume on page 103, sec-
14 tion 42:

15 THE INTERCEPTED TELEGRAMS.

16 42. The story of these intercepted messages
17 may well be regarded as the brooding tragedy of the
18 Japanese-American war. "Magic", they were called;
19 but if the State Department had the advantage of
20 clairvoyance, it also did not escape the perils and
21 pitfalls attendant upon the practice of the black
22 arts. The Department of State did not know what was
23 in the Embassy's correspondence; it only thought that
24 it knew, for the intercepted telegrams which came to
25 it were, as the evidence here has shown, so garbled,

tendentiously phrased and so ineptly translated as
1 to constitute very different documents from those
2 dispatched by the Japanese Foreign Ministry. The
3 differences in the intercepted messages which fell
4 into the hands of the Department of State in Washington
5 and those actually sent by the Foreign Ministry of
6 Tokyo are of two categories: one, readily demon-
7 strable errors in the intercepts (resulting presumably
8 from poor reception or deciphering) in factual matters;
9 the other, a much less tangible but insidious distor-
10 tion of the spirit of the original messages. It was
11 by reason of this latter class of errors especially
12 that the defense considered it necessary to present
13 in evidence the originals of a few of the telegrams
14 represented in the prosecution's evidence by the inter-
15 cepted versions. This undertaking was confined to
16 production of three of such messages, three however
17 of the most vital, they being the ones conveying to
18 Ambassador NOMURA Proposals "A" and "B" and the inten-
19 tion behind them. There is no reason to suppose that
20 these examples are not typical of the entire corres-
21 pondence. I shall briefly make the comparison between
22 the two versions of each of these three, inviting the
23 Tribunal to form its conclusion, as a result of the
24 investigation, of the effect which such a condition
25

may not unreasonably be supposed to have had on the Japanese-American negotiations.

2 43. Considering these three messages chron-
 3 logically, the first is Foreign Minister TOGO's
 4 telegram No. 725 of 4 November, advising Ambassador
 5 NOMURA of the anticipated approval by the Imperial
 6 Conference of the following day of Proposals "A" and
 7 "B", and explaining the intention with which the TOJO
 8 Cabinet had determined to continue the Japanese-American
 9 negotiations. There is no factual error of consequence
 10 in the intercepted version, nor is it easy to point
 11 out a specific word or phrase which has been given a
 12 false meaning; it is the whole spirit which is wrong.
 13 One example may be mentioned. The intercepted version
 14 states that the Japanese Government "have decided, as
 15 result of these deliberations, to gamble once more
 16 the continuance of the parleys."²⁴² As against this
 17 sporty language -- known as it is to be incorrect,
 18 the prosecution love to quote it still²⁴³ -- the
 19 original has "the Imperial Government continues the
 20 negotiations after thorough deliberations."²⁴⁴ It is
 21 suggested that a reading of the two documents in
 22 parallel will expose the dichotomy of the flamboyant,
 23

- 24
 242. Ex. 1164 (Tr. 10,319).
 243. Summation, SG-117 (Tr. 39,656).
 244. Exhibit 2924 (Tr. 25,960).

reckless gambler whose message Messrs. Hull and Ballentine
 1 read, and the sober, responsible statesman gravely
 2 communicating with his ambassador.

3 44. The next in this series of exhibits, the
 4 Foreign Ministers No. 726 of the same day, transmitting
 5 Proposal "A" and explanation of it, illustrates our
 6 point most vividly. Let me put a few excerpts from
 7 original and intercept in parallel columns to show the
 8 grotesque distortion of the entire feeling of the
 9 message:

	245	246
	Original	Intercept
10		
11		
12	"This is our proposal setting	"This proposal is our re-
13	forth what are virtually our	vised ultimatum.
14	final concessions	
15	"We make the following re-	"We have toned down our
16	laxation	insistence as follows.
17	"(Note) In case the United	"(Note: Should the American
18	States inquires into the	authorities question you
19	length of the necessary dur-	in regard to 'the suitable
20	ation, reply is to be made	period', answer vaguely
21	to the effect that the ap-	that such a period should
22	proximate goal is 25 years.	encompass 25 years.)
23		
24		

25 245. Ex. 2925 (Tr. 25,964).
 246. Ex. 1165 (Tr. 10,324).

1 "In view of the strong
2 American opposition to the
3 stationing for an indefinite
4 period, it is proposed to
5 dismiss her suspicion by
6 defining the area and du-
7 ration of the stationing

8
9
10 "you are directed to abide
11 at this moment, by the ab-
12 stract term 'necessary du-
13 ration', and to make ef-
14 forts to impress the United
15 States with the fact that
16 the troops are not to be
17 stationed either permanent-
18 ly or for an indefinite
19 period."
20

21 These are matters which bear, chiefly, on the
22 American impression of Japanese bad faith which so
23 largely motivated the State Department, according to
24 Mr. Ballantine. Does it perhaps put a different aspect
25 on the matter that what the Americans knew as Japan's
"revised ultimatum" was but a "proposal", and that only

"In view of the fact that
the United States is so
much opposed to our sta-
tioning soldiers in unde-
fined areas, our purpose
is to shift the regions of
occupation and our offici-
als, thus attempting to
dispel their suspicions.

"we have hitherto couched
our answers in vague terms.
I want you in as inde-
cisive yet as pleasant
language as possible to
euphemize and try to im-
part to them to the effect
that unlimited occupation
does not mean perpetual
occupation."

1 "virtually final"? That what to Mr. Ballantine appeared
2 a maneuver to allay American suspicions -- "shifting
3 the regions of occupation and officials," whatever
4 that may be -- was the straightforward purpose to
5 define those things -- area and duration -- the in-
6 definiteness of which had long aroused American opposi-
7 tion? Suspicions well enough grounded, if such a
8 message as this had in actuality been sent by the
9 Foreign Ministry! Is there a difference between
10 allaying suspicion by employing forms of words, shift-
11 ing claims; and dismissing suspicion by giving the
12 commitment long demanded by the other party? What of
13 euphemizing, trying to "impart" in as indecisive yet
14 pleasant language as possible "to the effect that. . .";
15 is it the same as to abide by an abstract but specific-
16 ally directed term, and to "impress" the United States
17 "with the fact that. . ."? The importance of this ques-
18 tion? It was knowledge of this telegram -- knowledge
19 of the intercepted version of it, as exemplified in
20 the excerpts in the right-hand column above -- which
21 vitiated the belief of the Department of State in
22 Japanese sincerity; "Naturally," said Mr. Ballantine,
23 "we were on our guard from that point on."²⁴⁷

24 This telegram having been such a crucial point
25 247. Tr. 10,937.

in forming the State Department's attitude in the negotiations, let us consider also some of the errors of the other type, errors of actual fact, in it. We have seen some, already; the last two examples above relate to most important facts, the points on which the negotiations turned. Here are others:

"With regard to the principle of non-discrimination in trade, our contention hitherto made on the basis of geographical proximity is withdrawn

"the statement in (the United States') memorandum of 2 October to the effect that 'it would be undesirable if either the United States or Japan were to pursue one course of policy in certain areas while at the same time pursuing an opposite course in other areas.'

"Of course, there is the question of geographical proximity when we come to consider non-discrimination in commerce.

"In a memorandum of the American Government, they state in effect, however, that it might be feasible for either country within a certain specified area to adopt a given policy and for the other party within another specified area to adopt a complementary policy."

Especially note this one:

1	"With regard to the four	"(4) As a matter of princi-
2	principles, every effort	ple, we are anxious to
3	is to be made to avoid in-	avoid having this insert-
4	cluding them in the terms	ed in the draft of the
5	of a formal agreement be-	formal proposal reached
6	tween Japan and the United	between Japan and the
7	States (whether in the form	United States (whether it
8	of agreement or other de-	is called an understanding
9	claration)	proposal or some other
10		sort of a statement)"

11 This paragraph in the intercepted message is
12 given a separate number, (4), thereby making it appear
13 coordinate with "(1) Non-discrimination in Trade,"
14 "(2) Inter-rotation and Application of the Tripartite
15 Pact," and "(3) Withdrawal of Troops." By thus seeming
16 to be one of the main divisions of the message and
17 cognate with the others, and by omission of the words
18 "the four principles" and instead referring to anxiety
19 to avoid having "this" included in the agreement, this
20 clause of course says that the Japanese will try to
21 escape committing themselves to a formal agreement
22 embodying the points which they have proposed above --
23 all of them. "Naturally," Mr. Ballantine's State
24 Department was on its guard in dealing with anyone
25 believed to have sent such a message as this. Of

course it was convinced of the insincerity of the
1 Japanese from reading such messages as these -- anyone
2 would be. It reads like duplicity incarnate. But this
3 was not the message sent by the Japanese Foreign
4 Ministry. Finally, for utter distortion in the ul-
5 timate degree, Section (2) on the Tripartite Pact:

6 "It should be further clar-
7 ified that Japan has no
8 intention of making any
9 unwarranted extension of
10 the interpretation of the
11 right of self-defense. With
12 regard to the interpreta-
13 tion and application of the
14 Tripartite Pact, it should
15 be stated that the Japanese
16 Government, as has been re-
17 peatedly explained in the
18 past, will act in accordance
19 with its own decision, and
20 that it is believed that the
21 understanding of the Ameri-
22 can Government has already
23 been obtained on this
24 point.
25

"At the same time that you
clarify to them that we in-
tend no expansion of our
sphere of self-defense,
make clear, as has been
repeatedly explained in the
past, that we desire to
avoid the expansion of Eu-
rope's war into the
Pacific."

1 Once more the suggestion is made, that a
2 reading of the original message discloses no ground
3 whatsoever for the suspicion of insincerity.

4 45. Last of the three telegrams available
5 for comparison is No. 735, of 5 November, from Foreign
6 Minister TOGO to Ambassador NOMURA. There is in the
7 two versions of this message only one difference worth
8 calling attention to, but that one is of considerable
9 importance in view of the prosecution's assertions of
10 the final nature of Proposals "A" and "B".

11	248	249
Original		Intercept
12 "It is our intention to pre-		"If it becomes apparent
13 sent Proposal "B" . . . as		that an agreement cannot
14 the last resort to save the		be reached, we intend to
15 situation in case Proposal		submit our absolutely fi-
16 "A" fails to conclude the		nal proposal, Proposal B"
17 negotiations.		

18 Proposal "B", as we shall see later, was an
19 attempt at a modus vivendi, and as such properly and
20 accurately described as a "last resort to save the
21 situation" if negotiations for a substantive agreement
22 seemed for the moment to have broken down. It is in
23 this sense of a last-resort effort that Proposal "B"
24 is described in the succeeding paragraph of the telegram
25

248. Ex. 2,296 (Tr. 25,971)

249. Ex. 1,170 (Tr. 10,343)

1 as "the final proposal". This, it is submitted, is
2 a different matter from an "absolutely final proposal"
3 in the prosecution's sense of an ultimatum.

4 Assuredly, no foreign office could place any
5 trust in a Government believed to have sent to its
6 diplomatic representatives such messages as these
7 intercepts; Mr. Ballantine, in saying that, naturally,
8 the State Department had to be on guard, is guilty
9 only of understatement (which the State Department's
10 attitude toward the negotiations shows us that it was).
11 Certainly, if an ambassador came to us saying that in
12 view of our country's strong objection to his country's
13 stationing its troops indefinitely in another's ter-
14 ritory, the area and duration of the stationing were
15 therefore to be defined; but at the same time we knew
16 that secretly his Government intended, while he answered
17 us vaguely, euphemizing pleasantly but indecisively,
18 to undertake some maneuver of marching troops up the
19 hill and marching them back down again, why wast
20 breath to ask for the details? If the Ambassador said
21 that in view of our recent memorandum his Government
22 would withdraw its claims based on geographical propin-
23 quity, while however his Foreign Minister had told him
24 that our memorandum could and would be interpreted
25 in a sense opposite to its meaning, and the claims

1 thereby justified, might we not well question whether
2 some ulterior meaning lay concealed in the words of
3 his proposal? And if he came offering to make an
4 agreement with us on specified points, but we knew
5 the while that he was directed to make every effort
6 to avoid entering into a commitment of the agreement
7 to writing, could we retain much belief in the Amba-
8 sador's protestations of sincerity, his or his Govern-
9 ment's? Being in possession of these messages, we
10 should naturally, as Mr. Ballantine said, have to
11 "take them into consideration". ²⁵⁰ It would be foolish
12 to pretend that we could do otherwise.

1 46. This knowledge, or half-knowledge, of
2 the contents of the Japanese diplomatic communications
3 was acquired, the prosecution say, "by the watchful-
4 ness, sagacity and hard work of the intelligence ser-
5 vice of the United States."²⁵¹ Perhaps one may won-
6 der whether it was, after all, sagacity; whether it
7 was not perhaps better described, in the Oriental
8 phrase, as "monkey-wisdom", the cunning that defeats
9 itself. Is it sagacity, which in the discarding un-
10 heeded of every proposal, every promise of an under-
11 taking, never allows to the other party the chance
12 to put his sincerity to the proof? How shall it be
13 said that Japan was insincere in her proposed commit-
14 ments, when they were never tested? Just what part
15 this knowledge sagaciously gained played in the American
16 decisions, to what extent it governed the spirit in
17 which she approached the Japanese-American negotiations,
18 it is not possible to know. But we can draw some sig-
19 nificant conclusions from the evidence in this case.
20 America's ambassador in Tokyo, Mr. Grew, was kept
21 fully informed concerning the negotiations, and in a
22 collateral way participated in them. Mr. Grew, of
23 course, was not intercepting any telegrams; hence he
24 had no clairvoyant sagacity, but only that with which
25 (251. Summation, BG-152, T. 39700)

his ability, experience and judgment equipped him.

1 As we shall have seen before we quit this subject,
 2 Ambassador Grew on more than one occasion urged upon
 3 his government--at least once enthusiastically--the
 4 wisdom of giving Japan an opportunity to prove whether
 5 her professed desire to establish a reorientation was
 6 sincere.²⁵² The Department of State did not accept
 7 h^{is} advice, nor apparently did the British Government
 8 urge it to do so, in reliance upon the advice of its
 9 own ambassador, Sir Robert Craigie, in accord with
 10 Mr. Grew's^{252a}.

12 Or consider a specific case in which we can
 13 almost see the influence of the intercepted corres-
 14 pondence at work. When Ambassador NOMURA presented
 15 Proposal "A", it will be remembered, Secretary Hull
 16 had approved the clause concerning non-discriminatory
 17 trade.²⁵³ That was on 7 November. Normally the inter-
 18 cepted telegrams were received in the State Department
 19 within a day or two of translation,²⁵⁴ and the explanation
 20 of Foreign Minister TOGO to Ambassador NOMURA of
 21 Proposal "A" had been translated on the 4th; but from
 22 (252. Exs. 2836, T. 25368, 2896, T. 25805;
 23 testimony of Ballantine, T. 10888)
 24 (252a. Ex. 2908, T. 25847)
 25 (253. Supra, §26
 (254. Testimony of Ballantine, T. 10951)

1 his reaction on the 7th the Secretary had apparently
2 not yet seen this one. A few days later, and he was
3 raising objections and suggesting the withdrawal of
4 that part of the Japanese proposal which went beyond
5 the earlier American position.²⁵⁵ Can there be any doubt
6 that in the interim he had learned that, as it appeared
7 to him, Foreign Minister TOGO had stated that the ques-
8 tion of geographical propinquity had still to be con-
9 sidered, despite the language of Proposal "A", and
10 that Japan was going to pretend that Secretary Hull's
11 words in his oral statement of 2 October that it would
12 be undesirable if either government "were to pursue
13 one course or policy in certain areas while at the same
14 time pursuing an opposite course or policy in other
15 areas" could be construed to mean that "it might be
16 feasible" for one country to adopt a given policy
17 within a certain area while the other adopted a "com-
18 plementary" policy in another area? How different
19 might not have been the course of history had Japan
20 been given, as Ambassador Grew urged, an opportunity
21 to "implement" her proffered commitments!

22 THE INDO-CHINA QUESTION

23
24 47. Questions arising out of Japan's move-
25 ment into southern French Indo-China in July 1941
(255. Supra, §26)

1 provided from that time a fourth question of major
2 interest in the Japanese-American negotiations. This ²⁵⁶
3 Indo-China issue may, indeed, be regarded as one of
4 paramount importance in that it ruptured the negotia-
5 tions for a time, induced American suspicion of sub-
6 sequent Japanese professions of peaceful intent, and
7 contributed to the American decision to rupture econ-
8 omic relations, a step which as the Tribunal has seen
9 from the evidence at least hastened the coming of war.

10 When the Japanese-American negotiations opened
11 Japanese troops were already stationed in the northern
12 areas of French Indo-China, under agreement entered
13 into in September, 1940 with the Government of France. ²⁵⁷
14 The Indo-China question seems, however, not to have
15 come up (unless in connection with equality of access
16 to resources) in the Washington negotiations until
17 almost a year later, when the further Japanese advance
18 into the southern part of the colony was made under the
19 agreement with France for joint defense. ²⁵⁸ With the
20 reasons for this move and the details of its accom-
21 plishment we are not especially concerned here; of
22 the reasons assigned--that it was a precautionary
23 measure against such an encirclement of Indo-China
24

25 (256. Testimony of Ballantine, T. 10862)

(257. Ex. 620, T. 6829)

(258. Ex. 651, T. 7079)

1 as would menace Japan's economic existence, and a
2 measure for prosecution of the China Affair--the lat-
3 ter seems perhaps to have been the chief, for it was
4 more emphasized in the conversations ²⁵⁹ (and also had
5 accounted for the original stationing of troops in
6 Indo-China, in 1940). Our concern, however, is with
7 the effect of the move on Japanese-American relations
8 and the negotiations.

9 The French and Japanese Governments had
10 reached an agreement about 20 July 1941 for the occu-
11 pation of certain bases in southern Indo-China. ²⁶⁰ From
12 5 July rumors of such a move had been afloat; on that
13 day the State Department had called in Ambassador
14 NOMURA and pointed out the harmful effect upon the
15 negotiations then in progress of such a move. ²⁶¹ The
16 agreement with France was nevertheless executed, and,
17 "feeling keenly the strained situation", Ambassador
18 NOMURA obtained an interview with President Roosevelt
19 on the 24th, at which time the President warned him
20 that if the move into southern Indo-China was carried
21 through, it would probably be unavoidable for him to
22 impose an oil embargo on Japan. ²⁶² The President

24 (259. Exs. 2883, T. 25753, and 2891, T. 25784)

(260. Ex. 647-A, T. 7058)

25 (261. Memorandum, Ex. 2879, T. 25731)

(262. Memorandum, Ex. 2882, T. 25750)

1 continued with the suggestion that it might be possible
2 to withdraw the Japanese troops then stationed in Indo-
3 China if the area could be neutralized by agreement
4 and its resources made freely and equitably available.
5 The final protocol for joint Franco-Japanese defense
6 of Inao-China was executed and Japanese troops moved
7 in only on 29 July; on the 26th, however, as a pro-
8 fessed counter-measure to execution of the agreement
9 of the 20th, President Roosevelt by executive order
10 froze all Japanese assets in the United States (Bri-
11 tain and the Netherlands followed suit).²⁶³ The President
12 had told Ambassador NOMURA, at the meeting of the 24th,
13 that he had been able theretofore to resist on the
14 ground of maintaining the peace of the Pacific, the
15 strong public sentiment for embargo on the export of
16 petroleum to Japan but that the move into southern
17 Indo-China would deprive him of his justification.
18 In view of this, it is interesting to note that on 2
19 July, more than three weeks earlier, and three days
20 before the State Department had heard the rumors of
21 the Indo-China move, the Japanese Embassy had already
22 "recently" heard rumors that the freezing of assets
23 was under contemplation, or had been decided on, by
24 the State Department.²⁶⁴
25

(263. Testimony of Ballantine, T. 10762)
(264. Memorandum, Ex. 2280, T. 25739)

48. As a consequence of the Indo-China move
and the rupture of economic relations by the American
freezing order of 26 July, negotiations languished for
some weeks. The United States, feeling that Japan's
action in making the southward advance was menacing,
and was inconsistent with her professed purpose of
working for a comprehensive peaceful settlement of
Pacific problems, had on the 23d (through the Acting
Secretary of State) advised Japan that she could see
no basis for pursuing further the conversations which
had been in progress. However, the receipt by Ambassa-
dor NOMURA on 6 August of a new Japanese suggestion,
in the form of an answer to the President's proposal
of 24 July of neutralization of Indo-China, gave him
the opportunity to make another approach, which he
accordingly did, presenting the proposal to Secretary
Hull on the same day. It amounted to a rejection
of the President's suggestion, comprehending instead
mutual undertakings of cooperation for the obtaining of
the resources required by the two nations; and a Jap-
anese undertaking of no further stationing of troops
in the Southwestern Pacific except Indo-China, whence
the troops already dispatched would be withdrawn upon
(265. Testimony of Ballantine, T. 10760)
(266. Telegram, NOMURA to TOYODA, Ex. 2886, T. 25765)

1 the settlement of the China Incident, to be balanced
2 by an American undertaking to suspend military measures
3 in the South Pacific and to advise the British and
4 Netherlands Governments to do the same. The United
5 States was to "recognize a special status of Japan in
6 French Indo-China ever after the withdrawal of the
7 Japanese troops from that area.²⁶⁷" Mr. Hull, the
8 Ambassador reported, promised to give an answer after
9 full study, but seemed little interested.

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23 (267. Ex. 2885, T. 25760)
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1 The negotiations continued to lag, until on
2 17 August Ambassador NOMURA had a meeting with Presi-
3 dent Roosevelt, upon the latter's return from his meet-
4 ing at sea with Prime Minister Churchill, at which time
5 the President conditionally approved the resumption
6 of negotiations. The Ambassador had made the new sug-
7 gestion that a meeting be arranged between the Presi-
8 dent and the Premier of Japan, "to make an exchange of
9 views with an eye to the general peace of the world."²⁶⁸

10 The President, according to the Ambassador's report,
11 discussed various aspects of such a meeting with much
12 apparent interest; but of course gave no answer at that
13 time. He did hand to the Ambassador two oral state-
14 ments: one was a serious warning to Japan that America
15 would be compelled to take all steps which it might
16 regard as necessary "if the Japanese Government takes
17 any further steps in pursuance of a policy or program
18 of military domination by force or threat of force of
19 neighboring countries."²⁶⁹ The other document was in
20 reference to the proposed meeting of the heads of state.
21 It said that

22 "In case the Japanese Government feels that
23 Japan desires and is in position to suspend its
24

25 268. Telegram from NOMURA to TOYODA, ex. 2888 (Tr.
at 25,778).
269. Ex. 2890 (Tr. at 25,783).

1 expansionist activities, to readjust its position,
2 and to embark upon a peaceful program for the Pacific
3 along the lines of the program and principles to which
4 the United States is committed, the Government of the
5 United States would be prepared to consider resumption
6 of the informal exploratory discussions which were
7 interrupted in July and would be glad to endeavor to
8 arrange a suitable time and place to exchange views."²⁷⁰

9 However, the Japanese Government should
10 "furnish a clearer statement than has yet been fur-
11 nished as to its present attitude and plans."

12 The proposed meeting of President and Premier
13 proved the topic for a considerable amount of dis-
14 cussion subsequently, but for the time being we need
15 not deal with the matter. Meanwhile, the suggestion
16 made by President Roosevelt on the 17th brought a
17 Japanese reply, which was delivered to the President
18 at a meeting of 28 August in the form of a statement
19 later referred to as "assurances."²⁷¹ This contained
20 a variety of general statements of Japan's intentions,
21 including explanation of the reason for Japanese
22 measures in Indo-China in much the same terms as those
23 theretofore given on various occasions.
24

25 270. Ex. 2889 (Tr. at 25,781).
271. Ex. 1245-B (Tr. 10,764).

1 On 6 September was delivered the Japanese
2 counterproposal designed to reopen the negotiations.
3 The clause relative to Indo-China provided

4 "that Japan will not make any military advance-
5 ment from French Indo-China against any of its adjoin-
6 ing areas, and likewise will not, without any justi-
7 fiable reason, resort to military action against any
8 regions lying south of Japan."²⁷²

9 This, it will be remembered, was the proposal
10 which had been handed to Ambassador Grew beforehand,
11 and on which he had sent to the State Department his
12 opinion.²⁷³ Of the clause in the proposal relating
13 to Indo-China, as of those concerned with China and
14 with the Tripartite-Pact question, Ambassador Grew felt
15 that "the commitments contained in the latest Japanese
16 proposal, if implemented, would fulfill" the basic
17 requirements of a satisfactory solution of the Pacific
18 problems. Mr. Hull, however, as will be recalled,
19 felt that the proposal as a whole had "narrowed down
20 the spirit and scope of the proposed understanding."²⁷⁴

21 49. The proposal by Japan of 25 September
22 introduced a new idea into the negotiations over the
23 Indo-China question, one carried over into proposal "A"
24

25 272. Ex. 1245-D (Tr. at 10,779).

273. *Supra*, §33.

274. Memorandum, Ex. 2898 (Tr. at 25,815).

of November:

1
2 "The Government of Japan will not make any
3 armed advancement, using French Indo-China as a base,
4 to any adjacent area thereof (excluding China), and
5 upon the establishment of an equitable peace in the
6 Pacific area, will withdraw its troops which are now
7 stationed in French Indo-China."²⁷⁵

8 The new thing in this proposal is the provi-
9 sion for withdrawal upon conclusion of "an equitable
10 peace" in the Pacific area (new in a formal proposal
11 for agreement; it had first appeared in the "assurances"
12 of 28 August). Mr. Ballantine says that "that addi-
13 tional clause, added nothing to the situation. It
14 would have been the same whether that clause had been
15 added or not";²⁷⁶ the prosecution dismiss it as
16 involving "no concession, because Japan was already
17 committed to France under their agreement to this pro-
18 posal."²⁷⁷ Before dealing with these arguments, let us
19 just see to the extent that it is not self-evident,
20 the meaning of this "equitable peace" as it is used
21 here. The explanation had been given on 28 August,
22 in a telegram of explanation to Ambassador NOMURA of

24 275. Ex. 1245-E (Tr. at 10,790).

25 276. Tr. 10,933.

277. Summation, SG-120 (Tr. 39,661). It might be noted
that the author of this passage in the summation was
discussing this clause in proposal "A" of 7 November.

1 the "assurances." "It is implied in the phrase 'when
2 an equitable peace has been established in the Far
3 East,'" he wrote, "that the withdrawal of Japanese
4 troops can be considered even while the China Affair
5 is not yet brought to a general settlement, if the
6 Chiang Kai-shek regime descends literally to a local
7 government owing to the closing of the supply routes,
8 normal relations between Japan and China are in effect
9 restored, and equitable and free acquisition of
10 resources from French Indo-China is assured to Japan." ²⁷⁸

11 Japan, then, had come to the point of willing-
12 ness to abandon the contention which had been made ever
13 since the advance into southern Indo-China, that the
14 troops must be stationed there to see the China Affair
15 through. Taking this clause in conjunction with item 6
16 of the "basic terms of peace with China" annexed to
17 the 25 September proposal, calling for fusion of the
18 Chiang Kai-shek and ²⁷⁹ Wang Ching-wei governments,
19 there seems to be some relaxation of that insistence.
20

21 To deal, however, with Mr. Ballantine's and
22 the prosecution's arguments that this clause contains
23 nothing new. A passage from the cross-examination of
24 Ballantine will make his, and the defense's, positions

25 278. Ex. 2920 (Tr. at 25,944).
279. Ex. 1245-F (Tr. at 10,794).

quite clear.

1 "Q . . . I will ask you this, whether the
2 25 September proposal by the Japanese did not contain
3 the new offer, now first made, to withdraw all troops
4 . . . from Indo-China upon either the settlement of
5 the China Affair or the establishment of an equitable
6 peace in the Pacific?
7

8

9 "A The new point there was an equitable
10 peace in the Far East. I don't think that adds any-
11 thing whatsoever to the other thing, because you
12 couldn't have an equitable peace in the Far East with-
13 out a settlement of the China Affair. Also, the term
14 "equitable" -- who is to decide which is to be equi-
15 table? It was (clear by) implication that that was
16 to be unilaterally determined by Japan."²⁸⁰
17

18 To interrupt a moment. How is this clear?
19 No such thing is suggested. Of course, Mr. Ballantine
20 has dogmatically made his unilateral interpretation,
21 in the second sentence of his answer -- it cannot be
22 equitable without settlement of the China Affair.
23 Dogmatically, but -- as he would have noted had he read
24 the documents in the negotiations -- incorrectly.

25 "Q Was it not understood by the Department of
280. Tr. 10,931-32.

1 State that the conclusion of this agreement which was
2 then under discussion would be considered by the
3 Japanese to be an equitable peace in the Pacific?

4 "A We hadn't reached any meeting of minds
5 at all on the fundamental principles which were to
6 govern the peace in the Far East.

7 "Q I understand that perfectly. But my
8 question is not that. Was it not the clear understanding
9 throughout these conversations, on both sides, that
10 if the conversations eventuated in an agreement, that
11 agreement would constitute the consummation of the
12 equitable peace in the Pacific?

13 "A Of course, that is true, but that phrase,
14 that additional clause, added nothing to the situation.
15 It would have been the same whether that clause had
16 been added or not." 281.

17
18 Did not the witness know that a term of every
19 proposal for agreement, without exception, had been
20 that through the good offices or the "introduction,"
21 or by request to Chungking, of the United States nego-
22 tiations for peace between Japan and China were to ensue
23 upon the conclusion of the agreement? The agreement
24 will, when executed, start off peace negotiations;
25 such an agreement will, "of course," constitute "an
281. Tr. 10,932-33.

equitable peace" -- with the China Affair still
1 unsettled, despite Ballantine's "it couldn't be."
2 "Upon settlement of the China Affair" and "Upon estab-
3 lishment of an equitable peace, which includes the
4 initiation of negotiations for settlement of the China
5 Affair" are not, pace Mr. Ballantine, synonymous.
6

7 As for the prosecution argument that, Japan
8 being already committed to France, the agreement to
9 withdraw troops upon conclusion of the China Affair
10 or conclusion of an equitable peace in the Pacific
11 area does not amount to a concession, there are several
12 answers. We might remind learned counsel that in the
13 common law it is not unfamiliar doctrine that the
14 promise to one to do that which one is bound to another
15 to do may be such consideration as will sustain an
16 enforceable contract. In any event, the promise to do
17 something other than what one is bound to do raises
18 no such question; and that is the condition here. The
19 evidence concerning the terms upon which the Japanese
20 troops were stationed in Indo-China is far from clear
21 in the record here; but so far as appears there is
22 in all of it no obligation undertaken by Japan to
23 France to withdraw the troops dispatched to Indo-
24 China upon settlement of the China Affair, or upon
25 establishment of an equitable peace in the Pacific, or

1 upon other terms specified. Until the demonstration
2 is made of what Japan was bound to France to do, the
3 value of her offer to America to withdraw upon specific
4 contingencies is unimpaired as consideration or quid
5 pro quo for the counterundertakings.

6 50. Negotiations went desultorily on, with
7 no notable progress, into November. Proposal "A" had
8 only one difference in the Indo-China section from the
9 25 September draft -- the proviso that "The Japanese
10 Government undertakes to guarantee the territorial
11 sovereignty of French Indo-China." Although this
12 language may not be without a certain significance --
13 a "guarantee" is offered, where before had been
14 assurances -- we need not be concerned to dwell on it.
15 For the next development in the Indo-China matter
16 was to be revolutionary. This was its treatment in
17 proposal "B", and it is therefore deferred until we
18 come to analyze that document.

19 SUMMARY: THE NEGOTIATIONS TO PRESENTATION
20 OF PROPOSAL "B."

21 51. Our analysis of the evidence having
22 now reached the point where efforts directed toward a
23 definitive settlement were suspended, it may be help-
24 ful if before considering the further discussions over
25 a modus vivendi we attempt to summarize the conclusions

1 which can be drawn from negotiations from April through
2 proposal "A."

3 The prosecution wish to consider that the
4 Japanese-American negotiations commenced with the
5 appointment of Admiral NOHURA as Ambassador to Washing-
6 ton (which was in November 1940).²⁸² At any rate, in
7 February -- on the same day that the Ambassador was
8 for the first time being urged by President Roosevelt
9 to undertake negotiations -- Foreign Minister MATSUOKA
10 sent him instructions in which he was reminded that his
11 function was to gain American understanding for Japan,
12 ending with the statement that to those who understood
13 her Japan would make even illogical concessions.²⁸³
14 And when the negotiations eventually got under way,
15 even in the days of the KONOE Cabinet there were
16 various concessions made by Japan.

17 52. The changes in Japan's position on the
18 three chief issues of the negotiations were, while the
19 KONOE Cabinet remained in office, briefly as follows.

20 In the matter of interpretation of the Tripartite-
21 Pact obligation in relation to the American interpre-
22 tation of the right of self-defense, Japan had receded
23 from her original stand that her obligations would be
24

25 282. Summation, SG-58 (Tr. 39,586).
283. Ex. 1045 (Tr. 9804).

1 applied "in accordance with the stipulation of article
2 3" of the pact to the point of giving assurance that
3 should America participate in the European war Japan
4 would "decide entirely independently in the matter of
5 interpretation" of her obligation. Japan had also
6 agreed to insertion in any agreement of a provision
7 that "both governments will be guided in their conduct
8 by considerations of protection and self-defense."

9 Mr. Hull had shown sufficient approval of this step to
10 encourage Ambassador NOMURA to report, and the author-
11 ities in Tokyo to believe, that agreement in principle
12 had been reached on the Tripartite-Pact question.

13 The question of economic activities had once
14 been completely settled, by Japanese concession of the
15 American position, though later the positions of the
16 parties moved apart again. The only real question
17 here was whether the agreement for non-discriminatory
18 international commercial relations was to be restricted
19 to the "southwest Pacific area" of the original Japanese
20 draft of May, or to the "Pacific area" as demanded by
21 the United States. Japan made the concession, and by
22 21 June the identical language stood in the parties'
23 drafts on this head. Later, however -- with presenta-
24 tion of the Japanese proposals of 6 September -- the
25 "southwest" again intruded into the negotiations, and

1 the position reverted substantially to what it had
2 been four months earlier, there to remain until October.

3 The third and crucial point, the question of
4 withdrawal of Japanese troops from and stationing them
5 in China, showed little progress during this period.
6 Many discussions had resulted only in making it certain
7 that the United States would not be content with any
8 Japanese commitments which did not undertake unequivocally
9 the limitation of the period and areas of
10 stationing the troops; until Japan could see her way
11 to agreeing at least to the principles which America
12 felt must govern her relations with China, the whole
13 matter remained only "subject to further discussion."
14

15 53. It was, however, with the first fruit of
16 the TOJO Cabinet's undertaking to reconsider the
17 situation in the negotiations -- with proposal "A" --
18 that Japan made the first really significant concessions.
19 It is submitted that analysis of the evidence
20 proves to demonstration that here and henceforth Japan
21 made not only concessions on every point, but repeated
22 and extreme concessions.

23 Of these the slightest were those in connection
24 with the Tripartite-Pact question, as is natural in
25 view of the fact that it was felt (and not, evidently,

on the Japanese side alone)that it had been all but
1 settled. Proposal "A" represented on its face no
2 significant change in the Japanese position -- that
3 Japan had "no intention of making any unwarranted exten-
4 sion of the interpretation of the right of self-defense,"
5 and that in interpreting the Tripartite Pact she would
6 "act in accordance with" her own decision. Yet there
7 is a significance in this language which escapes one
8 who would icly read old documents without relating
9 them to the events of their day. In the summer months
10 of 1941 American military preparations and measures
11 had prodigiously increased, were indeed increasing in
12 algebraic progression daily; and only in the month
13 before the TOJO Cabinet took office and commenced its
14 lucubrations over relaxed terms for the negotiations --
15 in September 1941 -- the United States had taken those
16 steps which, however equivocal its previous acts, in
17 fact and in law brought the nation into a state of war
18 with Germany. ²⁸⁵ Germany and Italy had been warned that
19 their naval vessels ventured into the Atlantic at their
20 peril; the American Navy's orders were to shoot on
21 sight; American vessels were sinking and were being
22 sunk in North and South Atlantic; and President

23 284. Ex. 2894 (Tr. 25,798).

24 285. Defense Summation, Section "E," "On Some Ques-
25 tion of International Law," §14, SUPRA. (Tr. 42,431)

1 Roosevelt had recognized it to be "a shooting war,"
2 and had armed American merchant vessels. ²⁸⁶ Japan's
3 commitment to make her own decision of the character
4 of America's acts, to adjudge their self-defensive
5 character or otherwise, in this context take on an
6 utterly different meaning from what they had had before.
7 No matter if the identical words had been used, before,
8 a thousand times -- now they were to be understood
9 in a new state of facts. If America had already,
10 before proposal "A" was handed over on 7 November,
11 gone to war against the European Axis members; if
12 Japan, knowing full well of this, had not attacked
13 America -- is it not plain that the language of
14 proposal "A" is the assuagement to the old American
15 doubt? "Your entry into the European war, although an
16 unprecedented extension of the right of self-defense,
17 we will concede to be a proper extension; we interpret
18 the Tripartite Pact as imposing no obligation on us in
19 the circumstances," it says as plain as day. Of
20 course, this could not be put into words quite so
21 baldly. The Tripartite Pact was there, and even in
22 the new orientation contemplated by the agreement with
23 the United States it had to be paid lip-service. Had
24
25

286. Seventy-eighth Congress, 2d Session, Events Lead-
ing Up to World War II (1945), 296-301 passim.

Japan been willing to repudiate the pact entirely

1 (which however the United States had always professed
2 not to require), her so doing would scarcely have been
3 calculated to instill confidence into American breasts
4 concerning the value of their agreement with Japan.
5 At any rate, she showed a clear willingness effectively
6 to reduce the pact to a dead letter. Ambassador NOMURA
7 blurted it out -- "I ask you to 'read between the
8 lines'" -- then, realizing his diplomatic faux pas,
9 retracted; but he would never have said it had he not
10 known his government's intention (this sentence too was
11 part of what he said "under instruction from his govern-
12 ment").²⁸⁷ Nor would Ambassador KURUSU, after his arri-
13 val, have been talking so enthusiastically about
14 arriving at a Japanese-American agreement so splendid
15 that it would "outshine" the Tripartite Pact. What
16 is conclusive is the letter which Ambassador KURUSU
17 offered to sign and hand to Secretary Hull, on
18 21 November.^{287a} Mr. Hull regarded it as of no importance
19 (why we can only surmise). But whatever the reason,
20 it is the fact that Japan was willing, as a part of
21 the agreement with the United States which was to
22

23 287. Memorandum, ex. 2927 (Tr. at 25,975).

24 287a. This matter, although not in fact a part of "the
25 negotiations to the presentation of proposal 'B,'" as
a continuation of them raising no new question may be
conveniently disposed of here.

1 "outshine" the Tripartite Pact, to consent to publica-
2 tion of a letter from her Ambassador containing the
3 statement that "Japan is in a position to interpret
4 its obligation freely and independently and is not to
5 be bound by the interpretation which the other high
6 contracting parties may make of it." With this pub-
7 lication the Tripartite Pact would in very truth have
8 become a dead letter! Japan's concession in this
9 matter had here reached, it is submitted, the point
10 almost of repudiating the pact in words.

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1 54. Secondly, there is the question of
2 economic activities, that which had once before been
3 agreed, then disagreed over. This point, too, how-
4 ever, was as a result of Ambassador NOMURA's report
5 to that effect, regarded as substantially settled.

6 Mr. Hull, however, had a hobby, for which
7 his name was famous throughout the world -- promoting
8 the idea of free trade among nations. As the evidence
9 discloses, it was his custom frequently to deliver
10 little homilies on this subject to the Japanese
11 Ambassadors, when the conversation turned away from
12 the complexities of the China question, pointing out
13 to them the extent to which he had succeeded in per-
14 suading the nations to adopt his principles. What
15 more natural, then, than that the Japanese Government,
16 striving to go as far as possible for agreement in
17 accepting his proposal to widen the scope of the
18 agreement for nondiscriminatory commercial relations
19 to the entire Pacific, propose its extension to the
20 entire world? What more natural, except his delight,
21 which he happily expressed to Ambassador NOMURA upon
22 first reading of the proposal? So thus it stood, in
23 proposal "A": Japan "recognizes the principle of non-
24 discrimination in international commercial relations
25 to be applied to all the Pacific areas, inclusive of

1 China, on the understanding that the principle in
2 question is to be applied uniformly to the entire
3 world as well." Afterthought, it is true, there was --
4 would such a condition bind the contracting nations
5 to control the conduct of third powers? Assurance
6 that no such absurdity was intended was quickly forth-
7 coming, whereupon Mr. Hull seems to have been content
8 on this point. Well may he have been, Japan conced-
9 ing, as she did, not only the narrow point involved
10 in the draft proposal but the broad principle the
11 application of which to and by all nations of the
12 world was Secretary Hull's most cherished ambition.

13 55. But it is in the matter of the withdrawal
14 of Japanese troops from China that we are compelled to
15 recognize the really basic concessions made by Japan.
16 To remind ourselves: the questions involved in this
17 point looked like this:

18 1) When will the general withdrawal take
19 place after restoration of peace?

20 2) As to troops to remain stationed in
21 China after restoration of peace,

22 a) In what areas will they be stationed?

23 b) When will they be withdrawn?

24 c) How many of them will there be?

25 It is our submission that, considering this

little cluster of questions as a whole, or regarding
1 severally the parts which together equal that whole,
2 there is every confirmation that the defendants have
3 spoken with sincerity as well as with exact truth
4 when they have testified that Proposal "A" represented
5 extreme concessions. It must be remembered that
6 Proposal "A" was not a complete redraft, and that
7 the document which Ambassador NOMURA handed to
8 Secretary Hull on 7 November and to the President on
9 the 10th is not the whole of it. Proposal "A" con-
10 sists of that document; of the last complete draft
11 proposal, that of 25 September; and of those additional
12 things which the Ambassador was authorized to put into
13 the form of agreement when one was reached. All
14 these must be considered together when we speak of
15 Proposal "A." We must not forget, also, the very
16 curious circumstances, that although Secretary Hull
17 did not ask the questions which would have brought out
18 the additional points in the Ambassador's instructions,
19 he knew of them. Above all, let it be remembered
20 always that the Americans had been insisting on some
21 definite commitments from the Japanese on such matters
22 as principle as would negative the intent imputed to
23 them of maintaining an overlordship of China.
24
25

56. Taking up the list of questions above,
1 we find that part of Proposal "A" relative to 1) to
2 represent a total concession to the American position.
3 The United States had for a few months been suggest-
4 ing that a two-year limit be placed on the general
5 withdrawal of troops after restoration of peace;
6 Proposal "A" contains the undertaking that "such
7 forces will commence withdrawal as soon as general
8 peace is restored between Japan and China, and the
9 withdrawal will proceed according to separate arrange-
10 ments between Japan and China and will be completed
11 within two years with the firm establishment of peace
12 and order." Two years, the American suggestion;
13 there can be no doubt about this point, at all
14 events; it is a concession, made for the first time.

16 The next point, 2)a), is the one which of
17 all gives least support to our position -- but, at
18 the same time, it is one which seemingly gave rise
19 to as little concern as any in the negotiations.

21 Never during the negotiations had the exact
22 areas in which troops were to be stationed been
23 specified; the matter had always been one of those
24 "subject to further discussion," and it was assumed
25 throughout that when agreement drew near the details
of this matter would have to be grappled with.

1 Proposal "A" still does not particularize on this
2 question. "North China, Inner Mongolia, Hainan
3 Island" is all the detail given. The objection of
4 the Americans was (which was perfectly true) that
5 this was the first mention, in a formal proposal,
6 of Hainan; which somehow, in their eyes, vitiated
7 the entire proposal. The matter seems hardly so
8 important as the State Department suggested, for
9 several reasons. First -- if it matters -- the State
10 Department had had knowledge for months that Hainan
11 was one of the points where it was desired to leave
12 troops stationed. More important is the psychological
13 aspect of it -- that this part of Proposal "A" actually
14 represented a concession, made for the first time, from
15 the extremist demands which had never before been
16 waived. Had agreement become so probable, at any time
17 in the preceding months, that these areas were to be
18 specified, they would (as the State Department knew)
19 have included these three, and more; and the State
20 Department might have considered the possibility that
21 the fact that this concession could be made was sympto-
22 matic of a spirit which, given encouragement, might
23 have resulted in concession to unpredictable lengths
24 for the sake of agreement. It was as true in November
25 as in February that Japan would, quite without regard

1 to logic, make the concessions to those who showed
2 understanding. At any rate, for argument let us
3 agree with the State Department that the inclusion
4 of Hainan was a retrograde step, and investigate the
5 remainder of Proposal "A."

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Our 2) b) is a most interesting point. Mr. Hull had always expressed himself most strongly about the indefinite period of the proposed troop-stationing; the matter of numbers was seldom discussed, and concerning areas he merely showed disapproval of their being "large," But on the time question he was firm; there must not be even that which gave the appearance of permanent stationing or -- which amounted to the same thing -- indefinite stationing; there must be a definite time-limit fixed. As we know, Japanese Government and High Command had at last, with the approval of Proposal "A", come to an agreement that the principle of a time-limit should be accepted. This was assuredly the high dramatic moment of the negotiations; for with that principle admitted by Japan, no matter how difficult might be the working out of the details, no matter how long the time that it might consume, agreement was within sight. Proposal "A" did not express this principle on its face. As we have seen, the Ambassador was given additional instructions for supplementing it, and his instructions on this point were, while making it clear that no longer was indefinite stationing proposed, to where if possible to the generalized term which had theretofore throughout the negotiations been used to express the term of the troop-stationing -- "a certain required duration." But he was

told, if the American Government asked, he was to mention
1 twenty-five years as an "approximate goal." It may well
2 be that twenty-five years was too long (though the State
3 Department has never, down to and including this trial,
4 suggested so); but if so, that was a promising place to
5 enter for negotiation. Willingness at long last to
6 abandon the claim to indefinite rights, to agree to a
7 time-limit at all, suggests a willingness to negotiate
8 over the limit. Again, Secretary Hull knew from the
9 Ambassador that it was Japan's intention to recognize
10 the principle of limiting the time of stationing; and,
11 it will not be forgot, although he did not inquire about
12 the length of time, he knew; he knew that the principle
13 w at last accepted. He knew, even, the time-limit
14 which Japan would propose to start bargaining. This he
15 knew, and could have had no doubt, because he had read
16 Ambassador NOMURA's correspondence, which even in the
17 "Magic" version made so much clear.
18

19 Where before she had always stood firm, on the
20 most vital point of them all, Japan yielded. Was it no
21 concession?
22

23 Lastly, 2)c)is certain. The American officials
24 had, so far as appears from the evidence, never had any
25 commitment from the Japanese concerning the number of
troops to remain in China. It is, of course, possible

to take the view that now, with the principle of withdrawal accepted, it was unnecessary to consider this question. Nevertheless, within a few days after the presentation of Proposal "A", Ambassador NOMURA was asked -- the only aspect of this all-important matter which elicited any inquiry -- and readily gave the reply that "possibly 90 per cent would be withdrawn." I press the point again; ten per cent may, or may not, have been an excessive remainder; but the State Department did not suggest that, the State Department did not in fact discuss the matter at all. Was it no concession that Japan was for the first time in the negotiations ready and willing to discuss the practical details of numbers of troops?

57. There is a passage in the evidence, in relation to Proposal "A", which we may use in summation of this point. It is Mr. Ballantine speaking. He has been asked for the State Department's attitude toward one of the points above -- the reasonableness of the twenty-five year limit on troop stationing.

"A We didn't consider each of these small points individually. We considered the proposition as a whole.

"Q I do not quite understand how you consider it as a whole without considering details; but

1 considering it as a whole, did you consider the 25-year
2 period to be unreasonable?

3 "A That would have to be taken into consider-
4 ation with the other elements in the situation -- the
5 total number of troops and the places where they are to
6 be stationed, and so forth." 288

7 To this day I do not understand how one con-
8 siders the whole without noticing the parts. "Small
9 points"? Failure to resolve them in half a year of
10 negotiation led to war. One must take into consider-
11 ation "the total number of troops and the places where
12 they are to be stationed, and so forth." We have taken
13 them into consideration -- together, they constitute
14 "the proposition as a whole."

15 Perhaps, after all, he had given us the answer:

16 "Q Now, in the proposal also there is again
17 no specific mention of the time of withdrawal of troops,
18 the number of troops to remain, and the other points
19 which were giving concern in the conversations, is there?
20

21 "A That is correct.

22 "Q But were these points explained in the
23 conversations by the two Japanese Ambassadors?

24 "A We had to read all their explanations in
25 the light of the instructions that was sent to
(288. T. 10927.)

Ambassador NOMURA.

1 "Q Well, then, there were explanations given?

2 "A Such explanations as were given are fully
3 there in the record. I don't recall exactly what was
4 ²⁸⁹ said."
5

6 Not recall? If he listened, how could he ever
7 forget?

8 Small points perhaps they were, the questions
9 of the Tripartite Pact, the principle of economic non-
10 discrimination, the matter of withdrawal of troops from
11 China and Indo-China -- but they go to make up "the
12 proposition as a whole." Is it unreasonable to think
13 that America might have some little interest in this,
14 the first proposal made by a new Japanese Cabinet and
15 believed by it to represent substantial concession?
16 Here is precisely the situation contemplated by the
17 Foreign Minister when he asked assurance of the Premier
18 that "if the United States showed a receptive attitude"
19 toward the proposals newly made, he would give his
20 support to obtain still further reconsideration of the
21 ²⁹⁰ concessions already made. It might have been worth-
22 while, just asking the questions which would have showed
23 a receptive attitude. But they were not asked.
24

25 (289. T. 10920-21.

290. Testimony of TOGO, T. 35697.)

PROPOSAL "B"

1 58. That which is known as Proposal 'B' was
2 the alternative plan approved by the Liaison Conference
3 in Japan for use in the event that no favorable pros-
4 pect developed from the presentation of Proposal "A".
5 It was realized that the situation, which had been
6 deteriorating since the move into southern Indo-China,
7 had become so tense that it might be very difficult,
8 especially in a short time, to arrive at a definitive
9 settlement at a stroke of all outstanding issues. Pro-
10 posal "B" was therefore worked out as a modus vivendi,
11 to tide the situation over until a basis for final
12 settlement could be reached (certain particulars in
13 which Proposal "B" goes beyond a mere modus vivendi will
14 be adverted to later.)²⁹¹ After mid-November it
15 appeared that there was no favorable prospect from
16 Proposal "A", and Ambassador NOMURA accordingly was
17 instructed to present Proposal "B".
18

19 59. ". . . on November 20, the Japanese Amba-
20 sador and Mr. KURUSU presented to the Secretary of State
21 a proposal which, on its face, was extreme."²⁹² Per-
22 haps Mr. Ballantine has employed quite unintentionally
23 revealing language in thus undertaking to characterize
24 Proposal "B". One can visualize him, glancing at the
25

(291. Testimony of YAMAMOTO, T. 25948.

292. Testimony of Ballantine, T. 10811.)

~~document upon which hung the fate of nations, observing,~~

1 "Ah! This is extreme!"; discarding it. I hope to be
2 indulged in going behind the face, learning what this
3 document does contain, what it implies and what it might,
4 if not so cavalierly glanced at, have augured.

5 This is it:

6 "1. Both the Governments of Japan and the United
7 States undertake not to make any armed advancement into
8 any of the regions in the South-eastern Asia and the
9 Southern Pacific area excepting the part of French Indo-
10 China where the Japanese troops are stationed at present,
11

12 "2. The Japanese Government undertakes to with-
13 draw its' troops now stationed in French Indo-China upon
14 either the restoration of peace between Japan and China
15 or the establishment of an equitable peace in the
16 Pacific area.

17 "In the meantime the Government of Japan
18 declares that it is prepared to remove its troops now
19 stationed in the Southern part of French Indo-China to
20 the northern part of the said territory upon the con-
21 clusion of the present arrangement which shall later be
22 embodied in the final agreement.

23 "3. The Government of Japan and the United
24 States shall co-operate with a view to securing the
25 acquisition of those goods and commodities which the two

countries need in Netherlands East Indies.

1 "4. The Governments of Japan and the United
2 States mutually undertake to restore their commercial re-
3 lations to those prevailing prior to the freezing of the
4 assets.

5 "The Government of the United States shall
6 supply Japan a required quantity of oil.

7 "5. The Government of the United States under-
8 takes to refrain from such measures and actions as will
9 be prejudicial to the endeavors for the restoration of
10 general peace between Japan and China." ²⁹³

11 The consequences of acceptance by the United
12 States of Proposal "B" are thus formidably catalogued by
13 Mr. Ballantine:

14 "(it) would have meant condonement by the
15 United States of Japan's past aggressions, assent by the
16 United States to unlimited courses of conquest by Japan
17 in the future, abandonment by the United States of its
18 whole past position in regard to the most essential
19 principles of its foreign policy in general, betrayal by
20 the United States of China, and acceptance by the United
21 States of a position as a silent partner aiding and
22 abetting Japan in her effort to create a Japanese
23 hegemony in and over the Western Pacific and Asia; it
24
25 (293. Ex. 1245-H, T. 10811.)

1 would have destroyed the chances of asserting and main-
2 taining American rights and interests in the Pacific;
3 and in its final analysis would have meant a most serious
4 threat to American national security."²⁹⁴

5 These are horrendous consequences indeed; but
6 where is the demonstration that they follow from the
7 antecedent? We are given here only the witness's opinion
8 for it -- not explanation, not proof nor demonstration.
9 Perhaps that is not quite fair to him; he does add one
10 more point, with explanation of his conclusion:

11 "Their conditional offer to withdraw troops from
12 southern Indo-China to Northern Indo-China was meaning-
13 less as they could have brought those troops back to
14 southern Indo-China within a day or two, and furthermore
15 they placed no limit on the number of troops they might
16 continue to send there."²⁹⁵

17 The reason for one of Mr. Ballantine's con-
18 clusions having been vouchsafed, it may as well serve as
19 a starting point for analysis of the proposal. And
20 first, in regard to the "conditional offer." One is at
21 a loss to know to what these words can possibly refer;
22 this offer is, it is submitted, as completely and
23 effectually unconditional as language can be made to ex-
24 press an undertaking. Where is the condition? The
25

(294. Testimony of Ballantine, T. 10814.

295. Id., T. 10815.)

1 Japanese Government "declares that it is prepared" to
2 move troops "upon the conclusion of the present arrange-
3 ment." We are told who is to act, what is to be done,
4 when it is to be carried out. The only condition of
5 its becoming effective is that of acceptance, the pass-
6 of consideration, the giving of the quid pro quo. If
7 it is in that sense, that the effectiveness of every
8 offer is conditional upon its acceptance, that Mr.
9 Ballantine's language is to be taken, certainly this
10 offer is accurately described as "conditional"; other-
11 wise his language has no meaning and the conclusion no
12 validity. By this example we may test his other sweep-
13 ing conclusions. Or, so far as concerns the series of
14 them quoted above, we may ignore them except as study
15 of the proposal itself puts them to the test.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1045, a recess was
19 taken until 1100, after which the proceed-
20 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: Page 151, Section 60.

5 Mr. Ballantine had, no doubt, his reasons for select-
6 ing the Indo-China clause of Proposal "B" for special
7 comment. Whatever they may have been, the fact is
8 suggestive. The critical state to which, by 20 Novem-
9 ber, relations between the countries had been brought
10 was the result largely, as has been mentioned,²⁹⁶
11 of the complications consequent upon the Japanese
12 advance into southern Indo-China. The offer of with-
13 drawal from that area suggests an attempt to turn
14 back the clock, to undo the damage done to Japanese-
15 American relations by that move. And that the inten-
16 tion in drawing Proposal "B" had been that precisely--
17 to restore conditions to what they had been before
18 that movement took place -- is shown by the evidence.
19 By that time there was such a tenseness in the atmos-
20 phere, the state of mind, not only of the officials
21 of the two countries but of their public as well,
22 was so filled with mutual suspicion, that it seemed
23 the only hope of saving the situation lay in trying
24 to restore confidence by going back to the status quo
25 296. Supra, Section 47.

ante and obliterating all that had happened meanwhile.

1 Thus, says Foreign Minister TOGO, "The intention of
2 Proposal "B" was, by restoring conditions to something
3 resembling normal -- to those prevailing before July --
4 to create a calm atmosphere and remove the imminent
5 threat of an outbreak of war.²⁹⁷
6

7 This purpose would, it appears, have been
8 reasonably fulfilled by the adoption of the proposal.
9 The menace felt, by the United States and the nations
10 for whom she acted in attempting to reach a settlement
11 with Japan, of the Japanese troops in southern Indo-
12 China would have been removed, and with the giving
13 by Japan of that evidence of good faith the air should
14 have been cleared. Mr. Ballantine, however, says
15 that it would not have been; the troops withdrawn, he
16 points out, could have been returned to the South on
17 short notice. This suggests two considerations.
18 Firstly, that so could Japanese troops, before July,
19 before ever the movement into the South took place,
20 have been brought there on a moment's notice. No
21 assurance against such an act existed in July which
22 did not exist in November; to the extent that America
23 had not felt a Japanese menace before entry of the
24 troops in July, she might reasonably not feel it after
25 297. Tr. 35698.

1 their withdrawal in November. They could indeed be
2 returned there, but just as they could in July have
3 been dispatched there. Secondly, Mr. Ballantine's
4 argument amounts, of course, to saying that the
5 United States had no confidence that any agreement
6 reached with Japan would be carried out, which is the
7 same explanation that we have heard him giving earlier
8 for its lack of interest in Proposal "A."²⁹⁸ Now, to
9 decline negotiations because one has no confidence
10 that any agreement reached will be carried out is one
11 thing, and comprehensible. But to talk of carrying
12 on negotiations, while entertaining such a feeling
13 of suspicion, is surely to suggest only "keeping up
14 the appearance of continuing negotiating," as
15 Mr. Ballantine himself puts it.²⁹⁹ Whether the
16 American suspicion was justified is beside the point--
17 that is the larger question to which this entire argu-
18 ment is devoted -- but if as a result of it America
19 approached the negotiations with Japan with the
20 conviction that Japan's commitments were worthless,
21 there could be not only no chance of agreement but no
22 purpose in agreeing. On that assumption, agreement
23 for immediate withdrawal of troops from all Indo-China
24

25 298. Supra, Section 41.

299. Tr. 10824.

1 would have been of no avail. Agreement to disregard
2 the obligations of the Tripartite Pact would have been
3 valueless; an undertaking to withdraw all troops from
4 China in two years would have been worthless; commit-
5 ment to observance of the principle of nondiscrimina-
6 tion in commercial relations, in any form, would have
7 been meaningless. If that was the position of the
8 Department of State, that any offer made by Japan was
9 meaningless because an agreement founded on it might
10 not be carried out, we can spare ourselves the trouble
11 of devoting study to this small segment of history,
12 but must pass it by, saying that in the Japanese-
13 American negotiations of 1941 America deceived Japan
14 with trickery. This I do not care to say; and there-
15 fore proceed with the attempt to see what analysis
16 of Proposal "B" will teach.

17
18 61. Proposal "B" was primarily -- on its
19 face and by intention -- a suggestion for a modus
20 vivendi, a temporary adjustment, a plan for "first
21 relaxing the strained relations' between Japan and the
22 United States, especially in the Southwestern Pacific,
23 thereby contributing to the restoration of amicable
24 feelings between the two nations, and in promoting
25 the negotiations thereafter" (as Ambassador NOMURA

explained to Secretary Hull³⁰⁰). Possibly a modus
 1 vivendi could in some circumstances properly be
 2 described as "extreme," as this one appeared to
 3 Mr. Hull. (Parenthetically, the prosecution allege
 4 that Ambassador NOMURA also so regarded it,³⁰¹ an
 5 assertion without warrant or foundation in the evidence
 6 or in fact.) But it must require more than the bare
 7 assertion, in no matter how strong language it be
 8 couched, to bring conviction that this one could have
 9 entailed the consequences which Mr. Ballantine without
 10 doubt or qualification assigns it as its role. A
 11 modus vivendi does not and is not intended to last
 12 forever -- the connotations of the Latin phrase by 43,663
 13 which we name it tell us that -- though such provisions
 14 as are agreed concurrently with it will. If this
 15 modus vivendi is put into effect, it is to make time
 16 for further negotiations toward settlement of the
 17 still unsolved problems -- the Tripartite Pact, the
 18 China Affair, economic matters, the Indo-China question
 19 itself. What then? Negotiations are resumed; they
 20 will succeed, or not, or either party may discontinue
 21 them, but in any of those events the modus vivendi
 22 is at an end. How has America thereby committed any
 23 act of the effect which Mr. Ballantine describes as
 24 300. Ex. 2941, Tr. 26031.
 25 301. Summation, Section G-124 (Tr. 39666).

The statement by one-time Secretary of State Byrnes

forever -- the connotations of the Latin phrase by 43,663

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that Proposal "B" was "extreme" (Exhibit 1,233,Tr.10,630) is of course the ran'est hearsay, Mr. Byrnes having had no connection whatever with the State Department prior to 1945, and having been a Justice of the Supreme Court in 1941.

1 sharing in the loot? Where is the threat to her own
2 security, when she can at will take what measures,
3 including war, she pleases? In this case, by the
4 way (this is the point in which Proposal "B" goes
5 beyond a simple modus vivendi), negotiations would
6 have been resumed with a considerable part of the
7 American position already conceded by Japan, if we
8 have been correct in our analysis of the negotiations
9 culminating in Proposal "A" on the Tripartite Pact
10 and economic activities; for Japan was prepared to
11 carry over into an agreement based on Proposal "B"
12 her commitments on these points offered in Proposal
13 "A".³⁰²

14 62. Was Proposal "B", then, fairly calcu-
15 lated to restore something approaching the status quo
16 ante the move into southern Indo-China? Certainly,
17 insofar as Indo-China itself, the main point, is
18 concerned, it did that -- and more -- no troops in
19 the southern part, those in the northern to be with-
20 drawn "upon either the restoration of peace between
21 Japan and China or the establishment of an equitable
22 peace in the Pacific area." This latter clause having
23 appeared in no Japanese proposal prior to 28 August,
24 302. Ex. 779, p. 7;
25 Testimony of YAMAMOTO (Tr. 25948).

1 the position regarding withdrawal from northern Indo-
2 China is much improved over that of July. But
3 "restoring the status quo ante" means, fundamentally,
4 restoration of confidence; and herein, it is submitted,
5 is the real significance of Proposal "B." Considering
6 Japanese-American relations of 1941 in their entire
7 aspect, it had been the Indo-China move of July by
8 which relations had changed from bad to tense. That
9 action had convinced the United States and her
10 associates that Japan was bent on following the course
11 of aggression, and would not be dissuaded, that her
12 protestations of peaceful intent were those of in-
13 sincerity; the sequel to that action, the American,
14 British and Dutch rupture of economic relations with
15 Japan, was regarded by Japan as economic relations
16 with Japan, was regarded by Japan as economic warfare
17 upon her, threatening her very existence. The United
18 States, of course, did not know by what process of
19 compromise, of resolution of conflicting views of
20 policy, the Liaison Conference in Tokyo had come to
21 the willingness to enter into a modus vivendi including
22 immediate and unconditional withdrawal of troops from
23 southern Indo-China. But America had, I say, regarded
24 the move into that area as all-but-conclusive proof
25 of Japan's settled policy of aggression; how could

1 she mistake the tremendous psychological significance
2 of this retreat? No matter if the troops could be
3 returned to southern Indo-China in a few days; the
4 evidence of this proposal reversing pro tanto that
5 policy was that it was being abandoned, for an aggres-
6 sor does not voluntarily abandon his conquests while
7 retaining his aggressive intent. The very fact that
8 such a proposal could be made was indicative (and,
9 as the Tribunal knows from the testimony of many
10 witnesses to the violent disputes occasioned by it in the
11 Japanese Liaison Conference, was in truth the proof)
12 that the policy of use of force was losing its vigor.
13 Ballotine said that it was still possible, even
14 then, for Japan to give evidence of good faith "by
15 withdrawing troops or any other practical evidence
16 of an intention to follow peaceful courses";³⁰³ what
17 more practical evidence than this agreement for
18 immediate withdrawal of the very troops the dispatch
19 of which had brought the conviction of Japan's unpeace-
20 ful course? This change of front by Japan, it is sub-
21 mitted, can in respect of this question be regarded
22 only as a restoration and more of the status quo ante
23 the move into the south.

63. What of the other questions involved in
1 Proposal "B"; have the Japanese proposals as to them
2 the effect of restoration of the status quo ante?

3 The prosecution, claiming thereby to have demon-
4 strated the "narrowing" process which they contend
5 characterized the Japanese attitude toward the
6 Japanese-American negotiations, have adopted the
7 method of comparison of successive Japanese proposals
8 (comparison "as a whole," of course, never of "small
9 details"). Let us apply that process--but attending
10 to the parts of the whole--to the position as it
11 stood with the presentation of Proposal "B." Taking
12 the proposal by items, it is instructive to place
13 beside it the corresponding provisions of the pro-
14 posal of 6 August,³⁰⁴ the first which undertook
15 solution of the Indo-China question, and the inter-
16 vening one of 25 September,³⁰⁵ to find how the
17 Japanese position had changed.
18

19 Withdrawal of forces from French Indo-China
20 was proposed, in August, upon settlement of the China
21 Affair; in September upon establishment of an equitable
22 peace in the Pacific area. By Proposal "B" in November,
23 both alternatives were offered; with the new agreement
24 to withdraw from Southern Indo-China immediately.
25

304. Ex. 2805, Tr. 25760.

305. Ex. 1245-E, Tr. 10782.

Clearly no narrowing there; far broader.

1 In August, a special status of Japan in
2 Indo-China was to be recognized even after withdrawal
3 of troops; in September, the principle of commercial
4 nondiscrimination was recognized to be applied to the
5 Southwestern Pacific area. In November, application
6 to the entire world of the principle of nondiscrimina-
7 tion was agreed (brought over from Proposal "A"). No
8 narrowing there, but the ultimate in broadening.
9

10 In August, the United States was to tender
11 good offices for peace negotiations between Japan
12 and China; in September, to refrain from measures
13 which would hamper efforts for settlement of the
14 China Affair; in November, to refrain from measures
15 prejudicial to the endeavor for restoration of peace.
16 Though differently phrased, the three mean the same
17 thing, the first having always been explained as re-
18 quiring cessation of aid to Chiang Kai-shek. No
19 broadening, but no narrowing.
20

21 In August, there was to be American coopera-
22 tion to secure for Japan resources needed from the
23 Netherlands East Indies, Japanese cooperation to
24 secure for America such resources needed from East
25 Asia; in September, cooperation to secure commodities
from the Powers concerned. In November, cooperation

1 to secure commodities required by the two countries
2 in the Netherlands Indies. Possibly somewhat narrowed--
3 but to be considered in the light of the fact that in
4 November Japan no longer demanded recognition of any
5 special position of hers in French Indo-China and the
6 Netherlands Indies.

7 In August (and in September, substantially)
8 Japanese guarantee of the neutralization of the
9 Philippines is to be given on condition of nondiscrim-
10 inatory treatment of Japanese nationals and interests
11 there. In November there is no mention of this
12 matter. Probably a broadening.

13 Finally, though it is not expressed in the
14 proposal, it appears that the November offer contem-
15 plated that Proposal "A's" 25-year goal for with-
16 drawal of troops from China would stand -- unless,
17 indeed, in accordance with the general tone of
18 Proposal "B" as exemplified by the immediate retreat
19 from southern Indo-China, this term too was to be
20 relaxed still more. This, of course, a tremendous
21 broadening.
22

23 64. The only intimation given us by the
24 evidence of that in Proposal "B" which constrained
25 Mr. Hull to regard it as "extreme" was his response
to the clause providing for American abstention from

1 measures "prejudicial to the endeavors for the
2 restoration of general peace between Japan and
3 China." Ambassador NOMURA reported after the inter-
4 view at which he presented Proposal "B" that "Hull
5 showed complete disapproval of the item,"³⁰⁶ and
6 that point alone appears, from the evidence, to have
7 occasioned any discussion. For understanding of
8 those discussions, it is necessary to go back a
9 moment.

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On 7 November, when Proposal A was present-
1 ed to Secretary Hull, he had inquired of Ambassador
2 NOMURA as his own personal idea how Japan would re-
3 ceive a pledge from China's highest authority to the
4 government and people of Japan of China's sincere
5 friendship and desire for restoration of friendly
6 relations.³⁰⁷ This suggestion being transmitted to
7 Tokyo, it was readily accepted, on the understanding
8 (which was never denied) that it implied the proposing
9 by Chiang Kai-shek of peace negotiations, to promote
10 the establishment of peace between the two nations.³⁰⁸
11 It was concurrently pointed out to Ambassador NOMURA that
12 it would still "meet the original desire of the Japan-
13 ese Government ... if the United States intends at
14 this juncture to proffer its good offices between Japan
15 and China in accordance with the line suggested by
16 Secretary Hull ..."³⁰⁹ (It had been assumed by every
17 proposal and counter-proposal and in all conversations
18 since May that as part of any settlement the United
19 States would tender such good offices, or "suggest"
20 to China the commencement of negotiation, or some
21 equivalent, and that peace negotiations would start
22 simultaneously with the Japanese-American settlement.)
23
24

25 307. Ex. 2928 (tr. at 25,989).
308. Ex. 2930 (tr. 25,998).
309. Ex. 2932 (tr. 26,000)

This was on 10 November.

1 After the presentation of Proposal B it was
2 still the Japanese position that realization of Presi-
3 dent Roosevelt's offer to act as "introducer" to bring
4 Japan and China together for peace talks was desired --
5 abandoning the long-standing policy of refusal to treat
6 with Chiang Kai-shek -- and that it was hoped that China
7 would pledge friendship and that peace talks would
8 begin in accordance with Secretary Hull's suggestion. 310

9 This, as Foreign Minister TOGO pointed out, implied
10 the expectation that "an agreement for a truce will
11 be concluded between Japan and China at the opening
12 of such negotiations," concurrently with the closure
13 of an agreement under Proposal B; ³¹¹ there seems there-
14 fore to be much logic in his position that as a matter
15 of course American aid to China would from the conclu-
16 sion of the agreement be neither necessary to China, with
17 hostilities suspended, nor consistent with the American
18 role of supporter of efforts for peace. Although
19 Secretary Hull had taken exception to the clause of
20 Proposal B relating to the stoppage of this aid, he
21 could scarcely have taken exception to it on any ground
22 of newness, it having been a familiar item of proposals
23
24

25 310. Ex. 2947 (tr. at 26,052).

311. Ibid.

1 from months before. He had in fact said only that it
2 was difficult to change the poli- aid to China
3 "so long as it remains unclear whether Japan's atti-
4 tude toward peace is unwavering." 312. It is sub-
5 mitted that, at least until such time as she received
6 some sign of sympathetic reception, Japan had at the
7 time of Proposal B by her willingness to abandon
8 southern Indo-China and the eagerness revealed to make
9 a peace with the China of Generalissimo Chiang made
10 as clear as could be expected a desire to adopt an
11 attitude of peace.

12 65. The prosecution give evidence of having
13 some difficulty -- of which the State Department showed
14 no trace -- over the oil question in Proposal B. This
15 was a part of the implementation of the clause for res-
16 toration of commercial relations to those prevailing
17 prior to the freezing of assets in July, and as such
18 would merely have put matters in the posture they had
19 at that time. It was provided that "The Government of
20 the United States shall supply Japan a required quanti-
21 ty of oil." Oil was being supplied, subject to numer-
22 ous restrictions, prior to the economic rupture. When
23 for a time there appeared a prospect of agreement on
24
25 312. Ex. 2941 (tr. 26,030).

1 the basis of Proposal B, instructions were sent to
2 Ambassador NOMURA of the quantity of oil which would
3 be expected in accordance with this provision.³¹³ This
4 was a natural move, with no sinister implications; the
5 Japanese Government had instructed the Embassy when
6 Proposal B was being presented that "the required
7 quantity be decided upon by agreement of both govern-
8 ments before the signatures are affixed to this present
9 agreement,"³¹⁴ and again in the telegram instructing
10 the quantity required it was pointed out that "as nego-
11 tiations develop but prior to the signing of the agree-
12 ment" there should be discussion of the amount to be
13 supplied.³¹⁵ The prosecution, however, point out that
14 a proposal that a much larger quantity be stipulated
15 for was originally submitted by the Army General Staff --
16 which is true but, so far as concerns the United States,
17 irrelevant in any event, because that proposal was
18 never submitted to her. Instead, at the insistence
19 of the Foreign Ministry the amount to be stipulated
20 was much reduced -- to a figure roughly equivalent to
21 the average of imports over some few years preceding.³¹⁶
22 It is said by the prosecution that "YAMAMOTO tried to
23 leave the impression that the plan was not considered
24

25 313. Ex. 2944 (tr. 26,041)

314. Ex. 1180 (tr. 26 10,388).

315. Ex. 2944 (tr. 26,041)

316. Testimony of TOGO (tr. 35,703)

1 by the Liaison Conference," but that "the accused
2 TOGO made it clear in his affidavit that such a proposal
3 was submitted but that the requirements were reduced
4 substantially at his insistence."³¹⁷ The statement
5 is correct except in its inference that Mr. TOGO testi-
6 fied that the original plan was submitted to the Liai-
7 son Conference; while it would be immaterial if true,
8 it is not true and there is no evidence supporting the
9 inference.

10 While the prosecution, by the way, appear
11 critical of the amount of oil thus stipulated, the
12 United States seems to have evinced no concern over
13 that point. Secretary Hull did call attention of
14 Ambassador NOMURA to the fact that Japanese oil imports
15 had taken a sharp rise just before the freezing went
16 into effect, which suggested to him stock-piling for
17 military use;³¹⁸ but the request which went to Ambassador
18 NOMURA for submission to the United States was upon an
19 entirely different basis from the imports of that period
20 of time which was worrying Mr. Hull. The quantity
21 desired from the United States was approximately the
22 average of imports for the years 1938-40, when normal
23 commercial relations were subsisting;³¹⁹ from the

25 317. Summation, SG-125 (tr. 39,669).

318. Memorandum, Ex. 1184 (tr. at 10,402).

319. Ex. 2944 (tr. 26,041).

1 Netherlands Indies, substantially that which had been
2 agreed between Japan and the Netherlands authorities
3 in mid-1940.³²⁰

4 66. Proposal B, then, upon dissection seems
5 to have inherent in it none of those tendencies which
6 Mr. Ballantine felt impelled to catalog so horrendous-
7 ly. At any rate, if the State Department was perturbed
8 over one aspect of it or another -- over the cessation
9 of aid to Chiang Kai-shek, or the petroleum requirement,
10 which it knew from intercepts, or something else --
11 those things might have been the subject of negotiation.
12 Again, as in case of Proposal A, it did not put the
13 questions, whether relaxation was not possible, did
14 not make the counter-proposals which could have led to
15 negotiation on such points. It appears that again,
16 possibly because of lingering distrust, the United
17 States took little account of the words of the propo-
18 sals or the explanations of the Japanese Ambassadors,
19 but relied rather on what it thought was contained in
20 the Ambassadors' instructions.

21 Secretary Hull told Ambassadors NOMURA and
22 KURUSU that not only he, but the representatives of
23 Britain, Australia and the Netherlands, would be glad
24
25 320. Testimony of ISHIZAWA (tr. 25,273, as corrected)

1 to go some way to meet Japan "if Japan has (a) firm
intention for carrying out a peaceful policy."³²¹

2 Proposal B, coming after Proposal A, appears at this
3 distance to have been an altogether extraordinary mani-
4 festation of such an intention. It is submitted that
5 it may well be regarded as a most reasonable effort to
6 arrive at a modus vivendi, and even concurrently to
7 concede several of the substantive points to the United
8 States. The first retreat -- physically, of soldiers,
9 forthwith -- the first immediate abandonment of what the
10 Western Powers regarded as Japan's ill-got gains; the
11 clearest indication that there yet lived unsuppressed
12 a moderate spirit in Japan; these are the significant
13 aspects of Proposal B.
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15
16 THE "HULL NOTE"

17 67. The note which Secretary Hull handed
18 to Ambassador NOMURA on 26 November (frequently refer-
19 red to as the "Hull Note") was such as might, in view
20 of the history of the negotiations, have been expected.
21 Secretary Hull, in his oral statement accompanying the
22 document, referred to it as "an effort to bridge the
23 gap between our draft of June 21, 1941, and the Japanese
24
25 321. Ex. 1184 (tr. 10,402).

1 draft of September 25 by making a new approach to the
2 essential problems underlying a comprehensive Pacific
3 settlement."³²² The recipients of the note, on the
4 other hand, regarded it as being wholly a new depart-
5 ure, as an "ultimatum" or "challenge," and as closing
6 the gates on efforts to settle the problems between
7 the nations by further negotiation on the line which
8 had been followed in the past.³²³ It is submitted that
9 the prosecution's repeated stigmatization as "insolent"
10 of the defendants' statements of their views to this
11 effect does not assist in determination of the case;
12 it cannot be "insolent" for a defendant to criticize
13 the policy of the United States and defend his own,
14 for which he is on trial; he has the right to make his
15 defense, affirmative as well as negative, and to show
16 if he can that good faith or probable cause which, if
17 established, will prove him not to have acted criminally
18 and to be entitled to acquittal.

19 It is proposed therefore to subject the United
20 States note of 26 November to analysis to determine
21 whether its effect is that which Mr. Hull believed or
22 that mentioned by the defendants. The document is too
23 long to set out in full here. It commences with a
24

25 322. Ex. 1245-I (tr. 10,815, at 10,819).

323. Testimony of TORG (35,706, 36,093, 36,108).

1 statement, different in language but not in essence
2 from what had been included in the earlier drafts, of
3 general principles, but including Mr. Hull's "Four
4 Principles." The operative provisions are found in a
5 second part, entitled "Steps to be taken by the Govern-
6 ment of the United States and the Government of Japan." 324

7 These may be summarized in this way:

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24 324. Ex. 1245-I (tr. at 10,821 et seq.)
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1 1) The two governments to endeavor to
2 conclude a multilateral nonaggression pact among
3 themselves and the British Empire; China, the Nether-
4 lands, the Soviet Union and Thailand.

5 2) The two governments to endeavor to con-
6 clude among themselves and the British, Chinese,
7 Dutch and Thai Governments an agreement for respect-
8 ing the territorial integrity of French Indo-China,
9 for joint consultation over necessary measures to
10 meet any threat to it which might develop, and for
11 maintenance of equality of commercial opportunity in
12 Indo-China.

13 3) Japan to withdraw all military, naval,
14 air and police forces from China and Indo-China.

15 4) The two governments to support no govern-
16 ment or regime in China other than the Chungking
17 Government.

18 5) Both governments to give up all extra-
19 territorial rights in China, including rights under
20 the Boxer Protocol and concessions, and to endeavor
21 to obtain the agreement of other governments to do
22 likewise.

23 6) The two governments to enter into nego-
24 tiations for conclusion of a trade agreement based on
25 most-favored-nation treatment and reduction of trade

barriers.

1 7) The freezing of assets to be rescinded
2 by both governments.

3 8) A plan to be agreed upon and a fund
4 established for stabilization of the dollar-yen rate.

5 9) Both governments to agree that no agree-
6 ment which either had concluded with any third Power
7 should be interpreted in such a way as to conflict
8 with the fundamental purpose of this agreement, the
9 establishment and preservation of peace throughout
10 the Pacific area.

11 10) Both governments to use their influence
12 to induce other nations to adhere and give practical
13 application to the basic political and economic
14 principles of this agreement.

15 This was the proposal which the Japanese
16 Government felt to have ignored the progress toward
17 understanding of eight months of negotiation, and
18 to have been the challenge to surrender or war in
19 that the United States knew that it could but be un-
20 acceptable to Japan. Of it the prosecution say that
21 "it contained not a single proposal, except for the
22 multilateral treaties, which had not been repeatedly
23 made before. It did not ask Japan to do anything
24
25

325.

which she was not already committed to do." A

1 brief discussion may be of service in finding the
2 truth between these widely-separated views.

3 68. The multilateral nonaggression pact
4 had never before been mentioned, so far as the
5 evidence discloses, in the negotiations. This pro-
6 posal thus not only implied importing into the dis-
7 cussion two additional nations -- the USSR and Thai-
8 land -- but by suggesting action which would inevi-
9 tably be time-consuming and productive of delay
10 pointed to indefinite protraction of the attempts to
11 reach a settlement despite the critically tense
12 situation then prevailing. In Japan, as the Tribunal
13 knows from the evidence, the government was under
14 strong pressure of the armed forces -- which felt
15 that they would be incapable of carrying out their
16 duty of defense of the nation if any further delay
17 occurred -- to conclude an agreement or at the least
18 show some signs of progress toward one without
19 further loss of time. 326. Such a provision as this

20 325. Summation, G-128-A (T. 39674).

21 326. KONOYE Memoirs, exhibits 2913 (T. 25860) and
22 2914 (T. 25868); testimony of YAMAMOTO (T.
23 25922-24), TOGO (T. 35690-97), and TOJO
24 (T. 36292, et seq.).

25

1 one was perfectly calculated to cut the ground from
2 under the government's feet in its effort to secure
3 general consent to continuance of negotiations.

4 The same remarks are pertinent to the second
5 clause, that for a multilateral agreement over the
6 status of French Indo-China. Japan had already, by
7 Proposal "B," abandoned any claim on her part to
8 special rights there; putting the matter in form of
9 a multilateral agreement would but complicate the
10 solution of the Indo-China problem and postpone its
11 eventual settlement.

12 These two points were wholly new with the
13 26 November plan; those which follow deal, for the
14 most part, with those things which had been the
15 subject matter of the negotiations. Clause three
16 may be considered, in view of the dominant importance
17 throughout the negotiations from beginning to end of
18 the question of a Sino-Japanese settlement and the
19 stationing of Japanese troops thereafter in China,
20 as the crux of the Hull note. The clause provides
21 for the withdrawal of Japanese forces -- military,
22 naval, air and police -- forthwith and unconditionally
23 from China and Indo-China. The negotiations from
24 May to November having been centered largely around
25 the questions of the time for and the terms of Japanese

1 withdrawal of these forces, it is self-evident that
2 this clause is a great departure from what had formerly
3 been the American position. As we have already seen,
4 the State Department's interest had been to secure
5 definition of the time for which Japanese troops would
6 be left in China for the purposes contended by Japan
7 to be reasonable and necessary, to mark out precisely
8 the areas in which those troops would be stationed, to
9 know what their numbers would be. Such questions had,
10 ever since the first American counter-proposal of
11 31 May, been "subject to further discussion" (and had
12 remained so in the last American draft, that of 21
13 June). The United States representatives had repeatedly
14 said that they had no thought of demanding immediate,
15 total, unconditional withdrawal from China, but were
16 prepared to discuss -- as in fact they did exhaustively
17 discuss -- the details of the withdrawal.^{327.} Where
18 in long months of negotiation their chief concern
19 had been to have a clear manifestation only that the
20 stationing of troops would be limited in time (and
21 to proper areas), where but ten days earlier they had
22 offered no objection to Japan's leaving stationed in
23 China ten per cent of her troops then there,^{328.} now

25 327. Testimony of Ballantine (T. 10913); Memorandum,
exhibit 2911 (T. 25856).

328. Exhibit 2940 (T. 26027).

1 complete abandonment of any effort at further dis-
2 cussion demanded Japan's immediate and unconditional
3 submission to a far harsher demand than had ever be-
4 fore been suggested. This clause, it cannot be doubted,
5 may be correctly described as "ignoring all past
6 progress in the negotiations."

7 So of the proposed mutual undertaking to
8 support no government or regime in China other than
9 that of Chungking; this is in two ways a radical new
10 departure. On the one hand, the question of Manchukuo
11 had likewise always been "subject to further discussion";
12 Japan had included "recognition of Manchukuo" as a term
13 in its proposals, the United States had countered with
14 "amicable negotiations in regard to Manchoukuo" and
15 had left the matter "subject to further discussion."
16 By this proposal discussion is cut off, Manchoukuo is
17 to be abandoned. Additionally, the Hull note requires
18 the repudiation of the Wang Ching-wei regime of Nanking,
19 which the discussions had contemplated would, rather
20 than being destroyed, merge and fuse with that of
21 Chiang Kai-shek,³²⁹ and in this respect likewise is
22 a new departure.
23

24 The fifth clause, proposing abandonment by
25 the parties of all extraterritorial rights in China,
329. Memorandum, exhibit 1083 (T. 9964).

1 was certainly not the request that Japan do something
2 that "she was already committed to do," as the
3 prosecution think. An extraterritorial right is a
4 right, which is to say by definition something which
5 the possessor is not under obligation to give up;
6 indeed, such a claim was never made in the negotia-
7 tions, though Secretary Hull did suggest the desira-
8 bility of such rights' being surrendered by all
9 countries having them. In fact, the Tribunal can
10 take judicial notice that, though the United States
11 has by treaty made during war time surrendered her
12 extraterritorial rights in China, other nations
13 retain them today, nor is it clear that they are
14 "committed" to giving them up until they commit them-
15 selves to doing so. At all events, the proposal that
16 the United States and Japan alone abandon such rights
17 as of November 1941 would have meant, not the promo-
18 tion of equal opportunity and the Open Door in China,
19 but the putting of these two countries at a disadvan-
20 tage as regards other powers which might not yield
21 to their persuasions to follow suit. Japan had for
22 half a century maintained its claim (recognized by
23 the United States, for example, in the 1917 Lansing-
24 ISHII Agreement³³⁰) that geographical propinquity
25 330. Exhibit 2317 (T. 17389).

to China endowed it with special interests there, which should be internationally recognized; now, it was demanded that she not only abandon that claim (which had been done, so far as commerce is concerned, by Proposal "A"), but recognize the possession of such positions, superior to hers, of all other countries except the United States.

Clauses six, seven and eight, providing for mutual rescission of the freezing of assets, most-favored-nation trade relations and exchange stabilization, were substantially in accord with the trend of the preceding negotiations.

The clause aimed at the Tripartite Pact goes considerably beyond America's insistence theretofore, amounting in effect to the requirement that the pact be repudiated. While certainly the wording of the clause is not offensive -- that no agreement which either party had concluded should be "interpreted in such a way as to conflict with . . . the establishment and preservation of peace throughout the Pacific area" -- in the context of the conditions when it was delivered this clause, going much beyond the previous American demands for a Japanese declaration that the purpose of the pact was defensive and that it would not be called into operation by American action in

1 self-defense, amounted to a requirement that the
2 Pact be publicly abrogated. The interpretation de-
3 manded by this 26 November note is not only a rever-
4 sion to the American contention that that is properly
5 denominated self-defense which it chooses to denomi-
6 ate so, but is a more embracing requirement of
7 interpretation tantamount to a demand for repudiation.
8 In the past, America had required an interpretation
9 which would prevent war with Japan if the United
10 States, acting in what she conceived to be self-
11 defense, became involved in war with Japan's ally,
12 Germany. The interpretation now proposed requires
13 that action which would disturb the peace of the
14 Pacific shall in no circumstances be taken in obedi-
15 ence to that Pact -- whether America move in self-
16 defense or conduct war of unblushing aggression,
17 still the Pact shall not be interpreted "in such a
18 way as to conflict with the fundamental purpose of
19 this agreement, the establishment and preservation
20 of peace throughout the Pacific area."

21
22 The last clause, providing for the attempt
23 to induce other nations to follow the courses agreed
24 by these two, is of course unobjectionable, and en-
25 bodies an idea which had been implicit throughout the
negotiations.

69. Reverting, now to Secretary Hull's suggestion that this document was founded upon the last preceding American proposal, that of 21 June, let us put side by side the chief controversial provisions of each, stating them not in ipsissimis verbis but in terms of their effects in the light of the conversations:

21 June ³³¹	26 November ³³²
(No equivalent provision)	Multilateral non-aggression pact.
(No equivalent provision)	multilateral convention concerning French Indo-China.
Questions of the time and terms for withdrawal of Japanese troops from China subject to further discussion (no equivalent provision as to Indo-China)	Immediate and unconditional withdrawal of all Japanese military, naval, air and police forces from China and Indo-China.
Amicable negotiations in regard to Manchukuo.	Non-recognition of any regime or government in China other than the Chungking Government.

331. Exhibit 1092 (Tr. 10,005)
 332. Exhibit 1245-I (Tr. 10,815)

21 June

26 November

1 Japan to give an interpre-
2 tation of the Tripartite
3 Pact satisfactory to Amer-
4 ica that American actions
5 in self-defense would not
6 call it into operation
7 against her.

8 (No equivalent provision)

Abrogation of the Tripar-
tite Pact.

9 Renunciation of extra-ter-
10 ritorial rights, conces-
11 sions and Boxer Protocol
12 rights in China.

13 It is submitted that on the face of this
14 juxtaposition, not only had the various provisions
15 of the Hull note not been "repeatedly made before,"
16 but the most of them are completely new, the remainder
17 go much further than any United States position there-
18 tofore taken. Of the ten points which compose it
19 numbers 6, 7, 8 and 10 may be conceded to be neither
20 new nor objectionable. Of the remaining six points as
21 we have grouped them above, only one can be in any way
22 considered to represent demands made before. The
23 multilateral non-aggression pact and convention con-
24 cerning Indo-China are, as the prosecution concede,
25 wholly new. The suggestion that the United States

1 required the immediate and total withdrawal of
2 Japanese troops from China, so far from having been
3 repeatedly made before, had been repeatedly denied by
4 the Secretary of State and his assistants in the
5 negotiations, and was specifically denied by one
6 of them from the witness box here, in this Tribunal; 333
7 a provision for complete withdrawal of troops is
8 certainly new in the sense that it is not an aspect
9 of the question of how many troops shall remain in
10 what areas for how long. There is no evidence of
11 any prior American insistence upon immediate with-
12 drawal of troops from Indo-China; though of course
13 Japan had offered it, so far as concerns the southern
14 part, by proposal "B." Non-recognition of any regime
15 or government in China other than that of Chungking
16 implied withdrawal of recognition from Manchukuo,
17 never before demanded but always treated as a matter
18 for settlement between China and Japan, and from the
19 Wang Ching-wei regime, which (while she had never
20 approved of it) America had seemingly been content,
21 in the past, to see fused with the Chungking Govern-
22 ment. The surrender by Japan and the United States
23 of their extraterritorial rights in China had never
24 before been proposed more concretely than as part of
25 333. Testimony of Ballantino (Tr. 10,913):

1 a dream of Mr. Hull's for general realization. In
2 the proposal relative to the Tripartite Pact alone
3 can we find something recognizably like positions
4 which had preceded; true, an "interpretation" is
5 still demanded, as always, but it is now one so
6 vague and general as to amount to that repudiation
7 of the Pact which the United States had always main-
8 tained that it did not ask.

9 70. The prosecution will have it that "it
10 is impossible to ascertain in what respect (the Hull
11 Note) is an ultimatum. The accused themselves and
12 their witnesses, when asked to point out what in the
13 document partook of the nature of an ultimatum, were
14 either unable to do so or else went off into the rare-
15 fied realm of Japanese metaphysics."³³⁴ Counsel has
16 not read the record. Defendants gave their reasons
17 for considering the Hull Note to be an "ultimatum,"
18 or did so to the extent that they were permitted to
19 do so by cross-examining counsel; in the few instances
20 when the prosecution ventured to cross-examine on the
21 matter, the explanations were cut off by change of
22 subject or by the cross-examiner's wandering off
23 into argumentative questions on matters of opinion.³³⁵

25 334. Summation, §G-128-A (Tr. 39,673)

335. Testimony of defendants SHIMADA (Tr. 34,763), TOGO
(question by Tribunal, Tr. 36,127-8, 36,135-8) and TOJO
(Tr. 36,082-92). Defendants KAYA, KIDO and SUZUKI, who
testified in chief re this, not cross-examined as to it.

1 The prosecution made a valiant effort to confine dis-
2 cussion of the Hull Note to the mere words on the
3 paper, to abstractions or metaphysics, to exclude any
4 effort to interpret it as a fact in relation to its
5 context of circumstance. It is, of course, the prac-
6 tical application to international affairs of the
7 general principles which -- just as it has furnished
8 the subject of negotiations -- was so treated in the
9 Hull Note as to lead the defendants to the belief
10 which they entertained. Let us inquire what those
11 practical applications as framed in Mr. Hull's pro-
12 posal would have amounted to.

13 The greater number of the stipulations of
14 the American note centered about the China question.
15 Japan was to withdraw forthwith all troops from China,
16 including even the police who were there to enforce
17 order in concessions and Boxer Protocol areas; those
18 concessions and the rights granted under the Boxer
19 Protocol were to be surrendered, with all other
20 extraterritorial rights; the withdrawal and surrender
21 of rights was applicable equally to Manchukuo, from
22 which also Japanese recognition was to be withdrawn;
23 the Wang Ching-wei Government was to disappear. The
24 effect of this would have been complete and total
25 withdrawal from the Continent -- abandonment of

1 Japan's legitimate as well as illegitimate interests.
2 As one of the defendants pointed out, "such a politi-
3 cal condition or situation would of itself affect
4 even the area of Korea." That is to say, Japan would
5 be placed in a predicament wherein she must withdraw
6 also from Korea.³³⁶ Her Continental interests totally
7 abandoned, her prestige in Asia vanished, Japan truly,
8 "vis-a-vis international relations, would have been
9 placed in the same situation that she is in today.
10 To say that again in different words, this demand
11 was asking Japan to return to a situation and cir-
12 cumstances which were already much worse than the
13 situation which existed at the time of the Manchurian
14 Incident. Or, more than that, to return to the situa-
15 tion in which Japan was before the Russo-Japanese War.
16 In other words, this was asking for Japan's suicide
17 as a great Power in East Asia³³⁷ That such
18 was the effect of the Hull Note the defendants may
19 well have believed; and that Japan's "suicide as a
20 great Power" might result in her ceasing to be a Power
21 at all, or even an independent nation, is not incon-
22 ceivable. Japan could not become again the recluse
23 island empire that she had been before the day the West
24

25 336. Testimony of TOGO (Tr. 36,136)

337. Ibid.

forced her at cannon-mouth to emerge into the world;
1 she was become too populous, she could not support
2 her people; unless a Power, she was nothing, she was
3 a beggar among nations. So felt all of them; "the
4 general opinion was that acceptance of the condi-
5 tions of this note would be tantamount to the defeat
6 of Japan," says another of the defendants;

7 ". . . . it seems clear that no nation will-
8 ingly relegates itself to a secondary position as a
9 world power if it can help it. As a patriotic
10 Japanese loving my country I was confronted with the
11 question of whether or not Japan could bow to the
12 American demands and yet preserve its standing in
13 the world." ³³⁸

14
15 "The terms proposed by the Hull Note for
16 Japanese acceptance were those which would be imposed
17 by victor upon vanquished, those equivalent to what
18 China might have offered to Japan after defeating her,
19 but cannot be comprehended coming from a neutral
20 interested in rendering good offices by way of media-
21 tion rather than one undertaking full intervention in
22 the conflict. Nor, it should be noted, was this the
23 opinion of the defendants alone in Japan. There is
24 no record of dissent by anyone conversant with the
25 338. Testimony of SHILADA (Tr. 34,665-66)

1 circumstances who passed judgment on the Hull Note--
 2 Liaison Conference, Cabinet, Supreme War Council,
 3 Elder Statesmen, all agreed. The prosecution now
 4 attempt to minimize the concurrence of the Elder
 5 Statesmen; they are now the defendants' "fellow
 6 conspirators" (notwithstanding two of them were im-
 7 portant prosecution witnesses, one being given an
 8 extraordinary testimonial in open court by the chief
 9 prosecutor),³³⁹ and they could not exercise informed
 10 judgment because "all really vital material was with-
 11 held" from them.³⁴⁰ Unfortunately for this latter
 12 contention, the very "fellow conspirator" who testi-
 13 fied to material's having been withheld stated also,³⁴¹
 14 that detailed explanation, to the satisfaction of all
 15 present, was made of the diplomatic questions;³⁴¹ and
 16 "withholding," if it occurred, was of military and
 17 production data, and so may have affected their judg-
 18 ment of Japan's prospects in a war, but not of her
 19 compulsion to undertake it.

21 Much breath has been expended in this court-
 22 room in discussion of the topic, "ultimatum." Whether
 23 the Hull Note be characterized as an "ultimatum" is
 24 utterly immaterial; it is its effect which concerns us.

25 339. Tr. 29,301

340. Summation, §G-132 (Tr. 39,680)

341. Testimony of Admiral OKADA, Keisuke (Tr. 29,314)

The Japanese thought that it forced war upon them.

1 Mr. Hull thought the same. With the handing of his
2 note to the Japanese Ambassadors on 26 November, he
3 placed the latter "in the hands of the Army and Navy"
4 342

5 -- the words are his own -- announcing on the 27th
6 that "the conversations had been terminated with the
7 barest possibility of resumption." 343

8 The free press
9 of America formed the same opinion of the Hull Note;
10 the Secretary held special press conferences on the
11 26th and 27th, when, abandoning the policy of both
12 governments since the beginning of the negotiations,
13 he explained the whole matter to the press: 344

14 it re-
15 sponded by proclaiming it Japan's choice, whether to
16 accept the Note or fight. 345

17 Looked at from the
18 Japanese side of the Pacific, it was Hobson's choice:
19 Japan could only surrender now, or fight to all-but-
20 sure defeat. The Hull Note is a part of history now;
21 let us leave it with a contemporary historian's words:
22 "As for the present war, the Principality of Monaco,
23 the Grand Duchy of Luxemburg, would have taken up
24 arms against the United States on receipt of such a
25 note as the State Department sent the Japanese Govern-
ment on the eve of Pearl Harbor."

342. Testimony of Ballantine, (Tr. 10,954)

343. Ex. 2863, Tr. 25,624

344. Ex. 2840, Tr. 26,370

345. Ex. 2950, Tr. 26,056

346. Nock, memoirs of a
Superfluous man (1943)
249.

NEGOTIATIONS AFTER 26 NOVEMBER.

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71. Receipt of the Hull Note in Japan put an end to all but the faintest hopes that agreement could be reached with the United States and war averted. Japan -- which, as has been mentioned,³⁴⁷ might have been able to yield still further had she received any response to her concessions already made -- could see no hope if the Hull Note stood. So much was agreed by the Liaison Conference which first considered the Note after its receipt, on 27 November;³⁴⁸ and it was agreed that a decision for war would have to be taken unless meanwhile efforts to secure American reconsideration should succeed. The decision for war was made on 1 December;³⁴⁹ but the efforts to obtain reconsideration, both before and after 1 December, failed. Japan's hardly made offers to relax her stand having all been discarded by the United States as of no account, she had nothing with which to induce reconsideration but whatever effect might come of taking a strong stand by convincing the United States that her firm closing of the negotiations was to be regretted.³⁵⁰

347. Supra, §57

348. Testimony of YAMAMOTO, Tr. 26,058; TOGO, Tr. 35,706; and TOJO, Tr. 36,358-59.

349. Testimony of YAMAMOTO, Tr. 26,062.

350. Testimony of TOGO, Tr. 35,712.

1 Of the diplomatic correspondence of this
2 period between Foreign Ministry and Embassy in Washing-
3 ton there was introduced into evidence a considerable
4 amount, which the prosecution at the time professed to
5 view with considerable alarm but in their summation
6 pass over without special comment. In view of this
7 recognition of its true importance, it may be simply
8 disposed of here. The instructions to the Ambassadors
9 between 27 November and 1 December not to break off
10 negotiations, despite the probability that such a rup-
11 ture would be the result of the Hull Note,³⁵¹ are but
12 recognition of the fact that the Foreign Ministry
13 could not decide to break off negotiations and to go
14 to war; until that was decided by the competent author-
15 ity, negotiations and attempts to negotiate naturally
16 continued uninterrupted. After the actual decision for
17 war on 1 December, likewise there remained a hope of
18 agreement, perhaps infinitesimal but not to work for
19 the realization of which would have been inexcusable.
20 This obvious point has been put by Mr. Hull himself,
21 in saying that even when the situation was "virtually
22 hopeless" one had to "clutch at straws";³⁵² "we did not
23 want to overlook the slightest chance,"³⁵³ as Mr.
24

25 351. Exhibits 1193, Tr. 10,442; 1194, Tr. 10,444; and
1195, Tr. 10,450.
352. Ex. 2840, Tr. 26,362. 353. Tr. 10,969

1 Mr. Ballantine says. Japan therefore made several
2 attempts to secure American reconsideration,
3 suggesting that the negotiations go back to the propos-
4 als and counter-proposals under discussion before the
5 Hull Note.³⁵⁴ The significance of this was, of course,
6 that it had been agreed and was understood by the
7 Japanese Government and High Command that if the
8 negotiations should be brought to successful conclu-
9 sion even after the decision to go to war had been
10 taken, operational plans for war were to be canceled.³⁵⁵
11 In view of the eagerness of Japan during the final
12 part of the negotiations to "clutch at straws" to
13 save the situation -- as evidenced by the readiness
14 demonstrated to make basic concessions -- it is not
15 unreasonable to suppose that even an American willing-
16 ness to resume negotiations might have sufficed to
17 bring about suspension of those plans.

18 72. An incident of which the prosecution have
19 attempted to make much is the recommendation sent by
20 Ambassadors NOMURA and KURUSU to the Foreign Ministry
21 on 26 November that to alleviate the tenseness in the
22

23 354. Testimony of Ballantine (Tr. 10,963)

24 355. Exhibit 809 (Tr. 7988; testimony of YAMAMOTO
25 (Tr. 26,062); MIYAO, Tatsukichi, (Tr. 26,726);
GENDA, Minoru (Tr. 26,750); SUZUKI, Teichi
(Tr. 35,225); TOGO (Tr. 35,714) and TOJO
(Tr. 36,396).

1 situation an exchange of telegrams, expressive of
2 cordiality, be arranged between President Roosevelt
3 and an unspecified Japanese authority.³⁵⁶ The con-
4 crete suggestion which the Ambassadors made was that
5 the President should wire that he hoped that Japan and
6 America would cooperate for the maintenance of peace
7 in the Pacific, to which the Japanese reply would pro-
8 pose the neutralization of Indo-China, the Netherlands
9 Indies and Thailand. Quite naturally, the Japanese
10 Government rejected the suggestion as holding out no
11 prospect of solution at that time;³⁵⁷ it is curious
12 indeed that the prosecution have sought to make an
13 issue of it. The neutralization of Indo-China had of
14 course been proposed by President Roosevelt as long
15 before as July, even prior to the Japanese move south-
16 ward; and it had then been rejected without discus-
17 sion.³⁵⁸ By November such a proposal would have been
18 still less acceptable to Japan -- quite aside from the
19 fact that the Ambassador's suggestion offered no solu-
20 tion of such difficult related questions as action to
21 be taken in connection with freezing of assets or steps
22 which the United States would take toward mediating for
23

24 356. Exhibit 1189 (Tr. 10,419)

25 357. Testimony of YALAMOTO (Tr. 26,064); TOGO
(Tr. 35,704-5, 35,707); and TOJO (Tr. 36,360).

358. Supra, §48.

1 settlement of the China Affair. Withdrawal of troops
2 from Southern Indo-China alone had with much difficulty
3 been agreed upon as an item of Proposal "B";³⁵⁹ with-
4 drawal from the whole of Indo-China, with the China
5 Affair (for terminating which troops had originally
6 been stationed there) unsettled, and with no American
7 quid pro quo mentioned, would have been out of the
8 question. The Ambassadors' proposal was, in any
9 event, made before they had been handed the Hull Note;
10 the Government, considering it in the light of the
11 Hull Note (knowledge of which was simultaneously
12 received),³⁶⁰ had no difficulty in rejecting it as
13 useless. The Ambassadors' report of reception of the
14 Hull Note, advising that there was no prospect of reach-
15 ing an agreement "unless the United States wholly
16 withdraws it"³⁶¹ is their own abandonment of their
17 scheme.

18
19 THE PRESIDENT: We will adjourn until half-
20 past one.

21 (Whereupon, at 1200, a recess was
22 taken.)

23 - - -
24

25 359. Testimony of TOGO (T. 35,687-88).
360. Testimony of YAMAMOTO (T. 26,065) and TOGO (T. 35,704)
361. Exhibit 2,949 (T. at 26,093).

AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: Page 191, Section 73.

A last event to be noted before we come to
the end of the negotiations is the message which
President Roosevelt sent, on the night of 6 December
in Washington, to the Emperor of Japan. Only one or
two points in connection with this message require
discussion. First is that of its probable effect had
it not been delayed, in reaching the Emperor, until
the war was actually commencing. The message was
sent with the professed purpose of seeing whether the
Emperor would not, joining with the President, "give
thought in this definite emergency to ways of dispel-
ling the dark clouds;" the concrete suggestion con-
tained (by inference) in it is again that of with-
drawal of Japanese forces from Indo-China, in return
for United States guarantee (to which the Governments
of the Netherlands Indies, Malaya, Thai and China
would be asked to subscribe) of the security of that

(362. Ex. 1245-J, T. 10825)
(363. Id. T. 10829)

³⁶⁴ colony. Asserting in their opening statement that,
1 "had it been delivered to the Emperor at once, (it)
2 might have changed the course of history"³⁶⁵, the prose-
3 cution now in summation recognize the obvious fact
4 that "in the light of previous events there was nothing
5 to be hoped for in sending this message."³⁶⁶ The idea
6 of neutralization of Indo-China had been proposed by
7 the United States, and rejected, in July; it had been
8 proposed by the Japanese Ambassadors in Washington,
9 and rejected, in November. The reasons which in Nov-
10 ember rendered the proposal inadequate to effect a
11 solution of Japanese-American problems in general,
12 existed yet in December. Neutralization of Indo-China
13 still in December left the China problem unsettled, the
14 freezing of assets in full force. President Roosevelt
15 made no proposal for settlement of those or other out-
16 standing problems; he did not suggest further negotia-
17 tions on any basis whatever; he hinted at no concession
18 which might be made by the United States. Neutraliza-
19 tion of Indo-China might have served the American pur-
20 pose, of relieving the threat which was felt from
21 Japanese troops in Indo-China, but it offered no relief
22 to Japan from the conditions which she considered to
23

24 (364. Id. T. 10828-29)

25 (365. T. 9312)

(366. Summation, §G-139, T. 39686)

1 be driving her to war in self-defense--the inexorable
2 pressure of the economic blockade, the drain of the
3 China Affair. The President's proposal, coming to
4 Tokyo on the night of 7 December 1941, offering no
5 solution for the over-all situation, could be of no
6 assistance.

7 The message, however, was actually received
8 in the Japanese Central Telegraph Office at noon on
9 7 December; and, as has been mentioned, the prosecution
10 were once of the mind to assert that its effect would
11 have been different had delivery to the Emperor not been
12 delayed until night. How the contents of the President's
13 telegram which were the same at noon and at midnight,
14 could have had any different or greater effect twelve
15 or fifteen hours earlier must remain a mystery. The
16 fact is, of course, that the message was the sort of
17 document which governments send for the purpose of
18 putting their positions on record, no more. Mr. Ballan-
19 tine conceded that the State Department "thought that
20 the chances were very slim that it would accomplish any-
21 thing"; and it was actually sent at 9 o'clock in the
22 evening of the day on which at 3 o'clock the State
23 Department had seen the message advising that Japan's
24 final note (with which negotiations would be
25 (367. T. 10969)

1 "practically dropped"³⁶⁸) was on its way.³⁶⁹

2 74. In any event, there is nothing to con-
3 nect any of the defendants, or indeed any Japanese Gov-
4 ernment officials, with the delaying of the presiden-
5 tial message. The proof is clear and undisputed that
6 this message--and others, the delay being applicable
7 to all "foreign telegrams" alike--was held up in the
8 Ministry of Communications on order of the Army Gen-
9 eral Staff,³⁷⁰ and that the Foreign Ministry not only
10 had no knowledge of it until a copy of it was delivered
11 to the Foreign Minister after midnight by the American
12 Ambassador, but made every effort, after learning of
13 press reports that such a message was being sent, to
14 locate it.³⁷¹ (The Foreign Ministry had no knowledge
15 also of the delaying of foreign telegrams.)³⁷² The prose-
16 cution rely upon the statement of the witness SHIRAO,
17 that he knew, "certainly before 6:00 P.M. when I left
18 the office, and I think some time between four and
19 six P.M. of the contents of the message."³⁷³ The state-
20 ment is demonstrably without probative value. The
21 witness says that his affidavit is based upon his diary;³⁷⁴
22 the diary shows the entry "it is reported that President

24 (368. Ex. 1193, T. 10442) (374. T. 10571)
25 (369. Testimony of Ballantine, T. 10970-76)
 (370. Testimony of SHIRAO, Tateki, T. 10569)
 (371. Testimony of KASE, Toshikazu, T. 26167, and
 KAMEYAMA, Kazuji, T. 26186)
 (372. Testimony of TOGO, T. 35730)
 (373. T. 10570)

1 Roosevelt highhandedly sent a personal message to
2 His Majesty and moreover, disclosed the strength of
3 the Japanese troops stationed in French Indo-China,
4 the movement of the Japanese convoy, etc." ³⁷⁵ In his
5 affidavit the witness remembered that "Colonel TOMURA
6 of the War Ministry (it proved later to be the General
7 Staff) ³⁷⁶ was telling me the contents of the telegram
8 probably by 4 o'clock . . ." ³⁷⁷; but on cross-examination
9 he admitted that "my memory was foggy and I couldn't
10 remember exactly what happened, therefore I put it
11 down that I may have heard it from Colonel TOMURA" ³⁷⁸
12 (he did not put it down that he "may have heard it").
13 If we compare the diary entry with the press report,
14 already available in Tokyo in the morning, ³⁷⁹ of the State
15 Department announcement of the sending of the message
16 by the President, the source of SHIRAO's knowledge is
17 readily evident. The State Department had announced,
18 as reported by ambassador NOMURA to the Foreign Min-
19 istry, that "the President had dispatched a personal
20 telegram to His Majesty the Emperor. The contents of
21 the message are unknown, but it is generally assumed
22 that it concerns the reinforcement of troops in French
23

24 (375. Ex. 1226, T. 10604)

(376. T. 10584)

25 (377. T. 10571)

(378. T. 10584)

(379. Testimony of KASE, T. 26167, and TOGO, T. 35727)

1 Indo-China and the advance into Thailand, in view of
2 the simultaneous disclosure by the Department, based
3 on information received, that in addition to one hun-
4 dred twenty-five thousand troops already stationed in
5 French Indo-China, two corps were moving this morning
6 into the Gulf of Siam . . ."³⁸⁰

7 Exactly what SHIRAO heard--but not what the
8 contents of the President's message proved to be!

9 Finally, the prosecution allege (without cit-
10 ing any evidence in support of the statement) that
11 "notice of the message was broadcast by radio in Japan
12 at 3 in the afternoon.³⁸¹ If this be true--which is
13 probable--it could account for SHIRAO's knowledge,
14 if he had any, for that of Colonel TOMURA (if it was
15 he from whom SHIRAO heard it, if he did hear it) and
16 for that of "the conspirators". It has not been denied
17 that the Foreign Ministry, and perhaps other branches
18 of the Government, know of the fact of the sending of
19 the message; much testimony was indeed given to detail
20 the action taken as a result of acquisition of that
21 knowledge. But from the fact of the alleged radio
22 broadcast announcing the sending of the telegram the
23 prosecution go on to the egregious non sequitur that
24 "there can be no doubt that its contents were known
25

(380. Ex. 2962, T. 26169)

(381. Summation, SG-138, T. 39685)

to the conspirators by 1800" -- that is, the contents
 1 of the President's message had been broadcast? At all
 2 events, this radio broadcast giving knowledge of the
 3 contents of the message destroys at once "the con-
 4 spirators'" motive for delaying the message itself and
 5 any inference of guilty knowledge of theirs if they did
 6 know its contents "not later than 1800".

7 75. The Japanese-American negotiations, which
 8 had in fact been ended by the Hull Note, were formally
 9 terminated only after the war had commenced, by service
 10 of the final Japanese note, of declaration of war.

11 This document having been analyzed and the peculiar
 12 circumstances surrounding its late delivery discussed
 13 elsewhere,³⁸³ those matters need not be dwelt upon here.
 14 One or two additional points, however, require some
 15 attention, a brief recapitulation of some of the evi-
 16 dence being therefore necessary.

17 The final note was drawn and prepared in ac-
 18 cordance with the agreed opinions of all participants
 19 in the Liaison Conference;³⁸⁴ the time for its delivery
 20 had been decided by the High Command,³⁸⁵ and approved by

21 (382. Ibid.)

22 (383. Summation for the defense, Section "E", "On Some
 23 Questions of International Law", §§15-22, T.42439-64)

24 (384. Testimony of YAMAMOTO, T. 26125)

25 (385. Testimony of YAMAMOTO, T. 26126-27, MUTO,
 T. 33174-75, TOGO, T. 35716, 35721-22, and
 TANABE, T. 35567)

386

the Liaison Conference upon the assurance that the time
 1 so set would allow a sufficient interval before com-
 2 mencement of hostilities. ³⁸⁷ The Foreign Ministry took
 3 the necessary steps to insure the delivery of the mes-
 4 s' sage to the United States at the agreed time, steps
 5 dictated by prudence to avoid premature disclosure but
 6 based upon calculations, of the time necessary for de-
 7 ciphering and typing, which proved remarkably accurate. ^{387a}

8 That in the end the message was delivered late--more
 9 than an hour after the time instructed by the Foreign
 10 Ministry to the Embassy--is shown by all the evidence
 11 to have been the result of neither malice nor negli-
 12 gence of any defendant, but on the contrary of the most
 13 criminal recklessness in the Embassy in Washington. ^{387b}

14 It is nevertheless necessary to advert to some of the
 15 inferences which the prosecution, attempting in despera-
 16 tion to sustain their cherished theory of a conspiracy
 17 to insure late delivery of that document, propose should
 18 be drawn from the evidence.
 19

20 76. After conceding that the Embassy in Wash-
 21 ington had not put itself in that state of vigilance
 22

23 (386. Testimony of YAMAMOTO, T. 26096, 26127-28, TANABE,
 T. 35567, and TOGO, T. 35722)

24 (387. Testimony of MUTO, T. 33176, TANABE, T. 35567,
 and TOGO, T. 35706, 35721--and see §80 of his
 25 affidavit, T. 35723-24, 35848-52, 35912--cf.
 T. 36141)

(387a. Testimony of KANEYAMA, T. 26186)

(387b. Testimony of YUKI, Shiroji, T. 26207)

obviously appropriate to the times, the prosecution contend notwithstanding that the Foreign Ministry was derelict in having taken the obvious precaution of ordering the declaration of war prepared for delivery without the use of typists; thereby, it is suggested, making upon the non-professional typists of the diplomatic staff demands which they could not be expected to meet in time. (The prosecution say that preparation of the note was left to be made by "members of the Embassy who were admittedly incompetent as typists.")

The evidence on the contrary is that the one who typed the note was the one senior member of the Embassy staff "who could operate a typewriter at all decently", which is submitted to be the opposite of confessed incompetence.) As against this interesting theory, the evidence introduced on behalf of the defense shows that, after ample warning of its impending arrival and importance, the message began coming in at the Embassy in the afternoon of 6 December, and was except for its last seventy words deciphered by midnight, at which

(387c. Summation, SG-146, T. 39695)

(388. Testimony of YUKI, T. 26211-12)

(389. The "pilot message" alerting the Embassy for arrival of the declaration of war had been "deciphered by noon of 6 December (Saturday)". Testimony of YUKI, T. 26209)

(390. Exs. 1216, T. 10534, and 1217, T. 10536)

(391. Pt. 14 of the Message, which alone did not arrive on the night of the 6th, consists of 70 words. See Ex. 2966, T. 26198, not read, which is Part 14.)

(392. ". . . the deciphering of the first 13 parts being finished before midnight." Tes. of YUKI, T. 26211)

time typing might and but for inexplicable negligence
1 would have commenced (the typing of the first eight or
2 nine parts of the thirteen might in fact have started
3 at 7 o'clock or even earlier)³⁹³. The typing, when finally
4 undertaken the following morning, required even under
5 pressure of the dawning realization of the gravity of
6 the negligence only some two hours -- from about 9 to
7 11 o'clock³⁹⁴ -- for parts 1 to 13. (On the ground that
8 a clean copy was needed, this was completely retyped
9 after 11 o'clock.)³⁹⁵ That is, had typing commenced even
10 at midnight, all but the fourteenth part of the message
11 would have been ready by 2 o'clock of the morning --
12 or, if we allow for typing two drafts, by 4 o'clock.
13 The two errors which had to be corrected -- it has not
14 yet been suggested that these were made deliberately
15 by Tokyo to insure more delay -- could then have been
16 corrected in good time, for the telegrams of correction
17 had arrived and been deciphered by 11 a.m.³⁹⁶ (These two
18 errors, which were considered to make necessary the
19 retyping of several pages of the document,³⁹⁷ consisted
20 (393. ". . . the first 8 or 9 parts had already been
21 deciphered by dinner-time (about 7 p.m.) that evening."
22 Id. T. 26210)
23 (394. Id. T. 26212-13)
24 (395. Id. T. 26213)
25 (396. Id. T. 26212)
(397. Id. T. 26213)

of a change of one word and addition of one line.³⁹⁸

1 The corrections could obviously have been inserted in
2 ink in the original draft between 11 and 1 o'clock.)

3 Finally, the fourteenth part was deciphered by 12:20³⁹⁹
4 or 12:30 p.m.,⁴⁰⁰ and could have been typed -- seventy
5 words! Eight lines of this text -- by anyone in time
6 for 1 o'clock delivery.
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22 (398. Testimony of KAMEYAMA, T. 26191-92)

23 (399. Id. T. 26201)

24 (400. Testimony of YUKI, T. 26214)

25

1 But, we are told -- "most important of all" --
2 the Foreign Ministry gave to the fourteenth part of the
3 message " a priority of only 'very important', while
4 giving other messages of much less importance urgent
5 classification."⁴⁰¹ Such a complete distortion of the
6 evidence would be ludicrous were it not so serious a
7 matter. What are the facts? First, that there is no
8 evidence that the fourteenth part was or was not
9 indicated as "Urgent". However that may be, other
10 messages were classified as "Urgent" -- in cipher! The
11 classification itself is in cipher. On this message
12 "appeared the plain English phrase 'Very Important!'"⁴⁰²
13 With all other messages the cable-clerks must decipher
14 enough of the preliminary matter to discover whether
15 they were dealing with "urgent", "priority" or "routine"
16 material; not so with this one. They had to decipher
17 not one word of this fourteenth part to discover its
18 supreme urgency; it leaped out at them, from the page
19 of the meaningless figures of cipher-groups, that one
20 intelligible word in the whole sheaf of papers, that
21 plain and arresting warning, "Very Important!" It is
22 the only "plain English" -- or indeed un-enciphered --
23 phrase discoverable in the whole diplomatic correspondence;
24
25 401. Summation, sG-164 (Tr. 39,696).
402. See the fourteenth part, Ex. 2966 (Tr. 26,198).

1 it might as well have been written in red, it could not
2 be missed. Is the classification "urgent" the higher
3 one in such case? But if, as appears to have happened,
4 the cable-clerks did by some incredible stupidity defer
5 the message labelled "Very Important!" to others less
6 urgent ⁴⁰³, is there any fault in Tokyo? Part 14 duly
7 arrived over the air-waves in the United States at
8 3:05 a.m., Washington time ⁴⁰⁴, and was deciphered by
9 the United States Navy and delivered beginning at 8:15
10 in the morning ⁴⁰⁵. What the American Navy, working
11 under the added handicap of having to break a secret
12 foreign cipher, could do, the Japanese Embassy with
13 ordinary diligence could have done (Part 14 arrived
14 at the Embassy "by about 7 a.m." ⁴⁰⁶). It is interesting
15 to note that the actual time required for all decipher-
16 ing and typing is well within the estimate of the Chief
17 of the Cable Section of the Foreign Ministry -- the
18 estimate upon the basis of which he ordered the times
19
20
21

- 22 403. Testimony of YKI (Tr. 26,212).
23 404. Ex. 2,968 (Tr. 26,230).
24 405. Ex. 2,969 (Tr. 26,232).
25 406. Testimony of KAMEYAMA (Tr. 26,201).

407

1 for transmission of these several cablegrams . Every
2 detail worked out as he had planned it -- every detail
3 save one: that he had not counted on the Embassy's
4 bland violation of the Foreign Ministry's order to
5 keep cable-clerks on duty at all times, and to prepare
6 this document beforehand for delivery ⁴⁰⁸ . Given
7 obedience to either order, all would still have been
8 well. Had only the typing commenced on the night of
9 the 6th, the cable-clerks might have made holiday
10 from midnight to morning and the job been finished in
11 time. Had those clerks stayed on duty as ordered; and
12 had they then even consumed the three hours and a half
13 that on the following morning they devoted to the
14 leisurely deciphering of half-a-dozen simple messages;
15 and even had the novice typist OKUMURA still been

16
17 407. Id. (Tr. 26,195-201). A reading of KAMEYAMA's
18 testimony in connection with Exhibits 2968 and 2969,
19 showing the times of receipt and of delivery by the
20 Navy of the various messages, and of the testimony
21 of YUKI (Tr. 26,207-15), showing the times of com-
22 pletion of deciphering and, inferentially, of arrival
23 at the Embassy, is most instructive as showing the
24 remarkable accuracy of his assumptions, which err only
25 slightly on the conservative side.

22 408. "The Embassy had been instructed to the effect
23 that there should always be some clerks on duty in the
24 cable section. Moreover, an instruction had been
25 sent to the effect that the document and all the
necessary preparations were to be made ready before-
hand (Ix. 1216)." Testimony of KAMEYAMA (Tr. 26199).
The members of the cable section "returned to their
respective lodgings before dawn, leaving a duty
officer . . . At from 9:30 to 10 they had all gathered
in the office. . ." Testimony of YUKI (Tr. 26211-12).

unwilling to defer his night of sleep to the fate of
1 his Empire -- Ambassador NOMURA might yet have kept
2 his appointment with Hull and with history. ⁴⁰⁹ By
3 such trifles is the destiny of nations shaped.

4 What becomes of the conspiracy in Tokyo to
5 bring about delay?

6 CONCLUSIONS

7 77. If our analysis of the negotiations has
8 been sound, stating the conclusions need not detain us
9 long. Our conclusions on these narrow, limited issues
10 must, however, be briefly related to certain of the
11 broader aspects of the case, with particular reference
12 to the positions adopted by the prosecution. A reading
13 of the prosecution's summations as a whole must con-
14 vince one that the entire case proceeds upon a post
15 hoc, ergo propter hoc principle: The Japanese Imperial
16 Conference decisions of 2 July, 6 September and
17 409. By 8:15 a.m. the United States Navy had completed
18 deciphering, among other messages, the fourteenth part
19 and the telegrams of correction (Exhibit 2969, Tr.
20 26,232). The Embassy cable-clerks should have com-
21 pleted them at least as early; so that by 8:15 the
22 entire text as corrected would have been ready for
23 typing. Allowing for the typing the two hours it
24 actually took, a final draft could then have been
25 prepared by 11 o'clock (no recopying to make correc-
tions then being necessary), even had the work
started only at 9, as in fact it did. (It should
moreover be noted that according to the estimate
of KAMIYAMA -- who, of course, is an expert -- the
lot of these messages received in Washington after
midnight of 6-7 December could have been deciphered
with one machine in two hours or so. Tr. 26,198.

1 5 November 1941 decided upon preparations for war
2 against the United States and the British Empire, and,
3 in certain contingencies, upon war; the war came;
4 ergo, it was never intended that it should fall out
5 otherwise. Having this premise in mind, we trace
6 out the negotiations; each Japanese proposal must, of
7 course, have been narrower than the last, since the
8 negotiations were but a camouflage; it is monstrous
9 to say that Japan ever made any concession, she having
10 started out with her fixed conception of what she must
11 have; if Japan offered a concession in the course of
12 the negotiations, it cannot have been sincere, since
13 ex hypothesi she was determined to gain her full demands,
14 by war if need be. Now, this sort of thing does not
15 advance the case. The merest reading of the 6 September
16 Imperial Conference decision, as put into evidence by
17 the prosecution themselves ⁴¹⁰, suffices to destroy
18 the basic premise: it was not carried out; the study
19 of the negotiations which we have just made will, it
20 is submitted, dispel any suspicion that the conclusions
21 are correct.
22

23 78. The prosecution have, as has been men-
24 tioned, proposed the test of whether Japan made con-
25 cessions in her negotiations with the United States as
410. Ex. 779 (Tr. 7,904).

1 the measure of her desire for peace. It fully appears
2 from the evidence which has been reviewed that there
3 was on the Japanese side no failure of comprehension
4 that "negotiation" is "give-and-take". The original
5 Japanese position was that to those who would under-
6 stand her, she would make concessions even at the ex-
7 pense of logic. We have seen the extent to which
8 concessions were made during seven months of negoti-
9 ations. Of course, there is no pretence that she
10 conceded every point; but her concessions were many,
11 and substantial, and sufficient to furnish incontro-
12 vertible proof of a conciliatory disposition. At
13 America's request, Japan had shown readiness to
14 render her Tripartite Pact obligation a dead letter.
15 At American insistence, Japan abandoned her claims to
16 special commercial and trade rights in the Asiatic
17 area, agreeing to share access to those markets equal-
18 ly with the United States. Japan gradually contracted
19 her minimum claims of what she must have out of the
20 China Affair which -- rightly or wrongly -- she had
21 fought at vast sacrifice for over four years. Con-
22 formably to the American demand, Japan was willing by
23 retreat to undo the damage done to relations by her
24 advance into southern Indo-China, restoring the status
25 quo ante.

1 These are not all; we may pick out from many
2 others a few minor points on which Japan made conces-
3 sions during the negotiations. The subject of "political
4 stabilization in the Pacific area," for example, had
5 been one to which a clause was devoted in the various
6 proposals from the original one of 9 April. It assumed
7 various guises: first a pledge of non-acquiescence in
8 transfer of Pacific territory to a European Power⁴¹¹ ;
9 then a guarantee of the independence of the Philippine
10 Islands on condition of their permanent neutraliza-
11 tion⁴¹² ; a statement of peaceful intention and denial
12 of territorial aspirations⁴¹³ ; finally, in the Japanese
13 25 September draft, a pledge not to resort to measures
14 jeopardizing "stabilization" of "the situation in the
15 Southwestern Pacific area"⁴¹⁴ . The United States had,
16 in accordance with its position that any agreement to
17 be made should be applicable to the entire Pacific,
18 suggested the amendment of this draft; but nothing had
19 been done toward it when the TOJO Cabinet took office.
20 When it had been decided by that Cabinet to resume
21 negotiations on the basis of the 25 September proposal,
22 the Foreign Minister authorized the amendment desired
23

24 411. Ex. 1059 (Tr. 9,859).

412. Ex. 1070 (Tr. 9,897).

25 413. Ex. 1078 (Tr. 9,944).

414. Ex. 1245¹, (Tr. 10,790).

415

1 by the United States⁴¹⁵, and the Secretary of State was
 2 handed a memorandum to that effect on 17 November⁴¹⁶.
 3 As another small illustration, the Japanese proposal
 4 of 12 May contained a clause which had immediately
 5 suggested difficulties to the Department of State:
 6 "Japanese immigration to the United States shall
 7 receive amicable consideration -- on a basis of
 8 equality with other nationals and freedom from dis-
 9 crimination"⁴¹⁷. This clause, as the result of
 10 American objection, was deleted and appeared in no sub-
 11 sequent Japanese proposal.

12 79. Another interesting evidence, not yet
 13 discussed, of the Japanese desire to conclude a peace-
 14 ful settlement, was the proposed meeting between Premier
 15 Prince KONOYE and President Roosevelt. Such a confer-
 16 ence had been a feature of the original draft pro-
 17 posal⁴¹⁸, but had been omitted in the first Japanese
 18 counter-proposal⁴¹⁹ and thereafter. After the sus-
 19 pension of negotiations in July, however, Prince KONOYE
 20 conceived the idea of proposing such a meeting in the
 21 hope that it might produce the results which negoti-
 22 ations through normal diplomatic channels had failed

23 415. Ex. 2938 (Tr. 26,025)

24 416. Ex. 2939 (Tr. 26,026).

25 417. Ex. 1070 (Tr. 9,898).

418. Ex. 1059 (Tr. 9,860).

419. Ex. 2871 (Tr. 25,691).

to do. There was much discussion of the matter, which
1 need not be touched on here; it is sufficient for now
2 to note that when Ambassador NOMURA first conveyed the
3 suggestion to President Roosevelt it was received
4 with some enthusiasm ⁴²⁰, but that the United States
5 soon began to say that the meeting would be useless
6 unless the pending questions were in effect decided in
7 advance ⁴²¹. It was at the time widely felt -- as for
8 example by Ambassadors Grew ⁴²² and Creigie ⁴²³ -- that
9 Prince KONOYE, by being able to give direct to the
10 President far broader assurances and commitments than
11 could be done through the diplomatic process, was
12 offering an opportunity for peaceful settlement which
13 it would be folly to reject. For some reason --
14 Mr. Ballantine gives several ⁴²⁴ -- the State Depart-
15 ment did not agree, and the meeting never materialized.
16 The significance, however, as a token of desire for
17 peace of a Japanese Premier's being ready to leave
18 his country on such a startlingly unprecedented mis-
19 sion will not be lost on the Tribunal, as it was not
20 lost on the experienced American and British representa-
21 tives in Tokyo. Ambassador Grew urged that the proposal
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23 420. Ex. 2888 (Tr. 25,776).
24 421. Exs. 2893 (Tr. 25,794) and 2894 (Tr. 25,798).
422. Ix. 2837 (Tr. at 25,385).
25 423. Ix. 2908 (Tr. 25,847)
424. Tr. 10,775-77.

1 "not be turned aside without very prayerful consider-
2 ation. . . The good which may flow from a meeting
3 between Prince KONOE and President Roosevelt is
4 incalculable"⁴²⁵ . To Ambassador Craigie it was
5 "the best chance of bringing about a just settlement
6 of Far Eastern issues, which has occurred since my
7 arrival in Japan"⁴²⁶ , "a chance which it would be
8 inexcusable folly to let slip."⁴²⁷

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23 425. Ex. 2892 (Tr. 25,791)
24 426. Ex. 2908 (Tr. at 25,850)
25 427. Id. (Tr. at 25,852).

80. It is, however, on the negotiations after
 1 the advent of the TOJO Cabinet that the prosecution
 2 concentrate their fire. This being the period in
 3 which Japan's greatest concessions were made, we are
 4 happy to meet them there. To go back a moment, it
 5 will be remembered that when the original draft pro-
 6 posal of 9 April had arrived in Tokyo, the consensus
 7 of the Liaison Conference was that negotiations on
 8 the basis of it should be undertaken with the objects
 9 of putting the speediest possible end to the China
 10 Affair, of avoiding -- not of facilitating, of avoid-
 11 ing -- a war with America, and of preventing extension
 12 of the European war to the Pacific.⁴²⁸ By October these
 13 necessities were even more urgent, and consequently
 14 the really basic concessions were made after that time.

The major concessions on the economic
 16 activities⁴²⁹ and China⁴³⁰ questions were, as we have
 17 seen, made during this time; during the TOJO Cabinet's
 18 days for the first time Japan abandoned such long-
 19 standing claims, offensive to the United States, as
 20 those of the right to indefinite troop-stationing in
 21 China and of her special position in trade and commerce
 22 arising out of propinquity to China; now for the first
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24 428. Ex. 2866 (Tr. at 26,694-96).

25 429. Supra, § 54.

430. Supra, §§ 55-56.

1 time she offered an immediate retreat by withdrawal of
2 troops, from southern Indo-China. During this period
3 Mr. Hull's cherished ideal of world-wide free trade was
4 accepted by Japan to be applied between the parties,
5 as was the principle of political stabilization
6 throughout the Pacific area. These things show the
7 absurdity of the prosecution's position that the "cabinet
8 under TOJO's leadership proceeded to carry out the
9 policy of September 6";⁴³¹ it is simply untrue, and
10 utterly without foundation in the evidence.

11 But, say the prosecution, the Imperial Con-
12 ference of 5 November decided on war, and that deci-
13 sion was carried out; hence there can have been no
14 bona fide negotiation thereafter. The basic conces-
15 sions made after 5 November -- by the proposals adopted
16 on that day and otherwise -- of course defeat this
17 argument. A conditional decision for war is a con-
18 ditional decision; that the condition is later realized
19 does not convert the original decision into one uncon-
20 ditional ab initio. It is true that the condition so
21 fell out, that there was war; but the evidence shows
22 earnest efforts for the success of the negotiations
23 meanwhile, which would have nullified the conditional
24 decision.
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431. Summation, §G-115 (Tr. 39,654).

1 These facts have been artfully coded by the
2 prosecution, who find it more pleasant to repeat, post
3 hoc, ergo . . . There are other unpalatable facts.
4 It is interesting, for example, to note that it is no-
5 where shown by evidence nor contended in argument that
6 the United States ever in the course of the negotiations
7 made any concession whatsoever. On the contrary, in
8 this game of give-and-take the United States position
9 is proudly stated to have been adamant from first to
10 last -- it was ultimative. By 21 June the State Depart-
11 ment had reached "the end of the thinking out and dis-
12 cussions" of the subject matter, and on that date
13 presented what was "up to the time of our November 26
14 proposal, our last complete proposal."⁴³² Negotiate?
15 Yes -- but "our attitude on that was the same from the
16 beginning to the end";⁴³³ "from the very beginning
17 of the conversations we told the Japanese that every-
18 thing must conform to our fixed principles . . . We
19 never talked to them in terms of the concessions we
20 would make from our principles";⁴³⁴ "we would be willing
21 providing it conformed to our fixed principles."⁴³⁵

22 Is this negotiation, or is it ultimatum?
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25 432. Testimony of Ballantine (Tr. 10,884).

433. Id. (Tr. 10,998).

434. Id. (Tr. 11,159).

435. Id. (Tr. 11,003).

1 81. The Japanese proposals "A" and "B" of
2 5 November have been repeatedly alleged in cross-
3 examination and in summation, to have been final,
4 the last word of Japan. America's last word, of course
5 -- as Mr. Ballantine has said -- came in June; but
6 Japan's is not shown to have come at all. Final, yes,
7 these proposals, in the sense that they represented
8 the general outline of matters in which concession
9 could be made; but those were exactly the matters of
10 interest to the United States. What the "last-word"
11 argument overlooks is the fact, well established by
12 the evidence, that there was an understanding between
13 Foreign Minister TOGO and Premier TOJO that if the
14 United States manifested interest in or receptiveness
15 to those proposals the matter of further concession
16 might be taken up. We know now that the United States
17 showed no interest; but they did not know then that
18 she would not -- rather, it is submitted, they had every
19 reason to suppose that she would. There is no proof
20 whatever that this intention was not genuine; on the
21 contrary, the far-reaching concessions already made
22 indicate the great probability that there might well
23 have been still further yielding in response to any
24 suggestion of an attitude of reciprocal give-and-take.
25

The evidence being against the prosecution

1 position that the TOJO Cabinet decided on war at the
2 outset and never seriously made any effort to avoid
3 it by negotiation, they have proved and now argue a
4 number of irrelevant matters which might be supposed
5 to have some prejudicial effect. An example is the
6 reliance -- naive if it were not disingenuous -- which
7 they profess to place on Ambassador NOMURA's presen-
8 tation of his resignation at the time of the change of
9 government. That ambassadors do resign with the
10 administration which appointed them the Tribunal knows,
11 if the prosecution do not; but the prosecution profess
12 to have discovered in the Admiral's request to be
13 allowed to resign the proof that he thought the TOJO
14 Cabinet one under which successful termination of the
15 negotiations was hopeless. It might be supposed that
16 what the Ambassador thought was in any event of small
17 interest, he being by the prosecution's standard -- as
18 a high-office holder of Japan -- a fellow conspirator
19 of the defendants. He appears, however, to have had
20 psychic powers: he knew the situation in Tokyo not-
21 withstanding he had been in Washington, and not in
22 Japan, for some nine months when the TOJO Cabinet
23 came into office; he had not attended the meetings of
24 the Liaison Conference or Imperial Conference where
25 Japan's basic policies were deliberated and decided.

he knew nothing of the Imperial Conference decision
 of 6 September, with its limitations upon the scope of
 Japanese diplomatic action; he was unaware that General
 TOJO, receiving the Imperial mandate to form a cabinet,
 was directed to undertake reconsideration of that
 decision,⁴³⁶ and that some members of his cabinet had
 accepted their portfolios upon the sole condition that
 that should be done sincerely;⁴³⁷ he did not and could
 not know what the attitude of the new cabinet toward
 the negotiations would be, for the cabinet itself did
 not yet know. If his submission of a resignation in
 those circumstances evidences a psychic sense, it was
 one which operated better at long range than on the
 morning of 7 December, when -- after being told
 repeatedly to destroy his codes and code machines,^{437a}
 after being told repeatedly that the fate of his Empire
 hung on the success or failure of his efforts,^{437b}
 after being told that the message which he had by then
 already received would in effect rupture the negotiations,^{437c}

436. Ex. 1154 (Tr. at 10,292); testimony of TOJO (Tr. 36,308-9).

437. Testimony of KAYA (Tr. 30,648-49), SHIMADA (Tr. 34,653-55), TOGO (35,671-72) and TOJO (Tr. 36,308-9, 36,314-15).

437a. Exs. 1211 (Tr. 10,524) and 2974 (Tr. 26,258-65); testimony of KAMEYAMA (Tr. 26,197).

437b. E.g. exs. 2924 (Tr. 25,960), 2925 (Tr. 25,964), 2926 (Tr. 25,971), 1174 (Tr. 10,356) and 1178 (Tr. 10,380).

437c. Ex. 1193 (Tr. 10,442).

1 after receiving cablegrams of greeting and farewell
2 from his colleagues in Tokyo ^{437d} -- when, after all this,
3 he remained the one man in Tokyo or Washington who up
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25 437d. Testimony of KAMEYAMA (Tr. 26,197) and YUKI
(Tr. 26,212).

to noon of 7 December did not know that war was coming. ⁴³⁸

1 Of course, his telegram of resignation contains no
2 implication such as the prosecution attach to it; it is
3 but the normal, humbly-phrased Japanese form of sub-
4 mission of his post to the incoming cabinet for its
5 disposition.

6 Another curious point is the prosecution's
7 emphasis upon the dispatch to Washington of Ambassador
8 KURUSU, which is alleged to have been a "camouflage,"
9 designed to conceal war preparations. What a prepos-
10 terous position this is needs no argument, for the
11 evidence speaks for itself. Admiral NOMURA himself had
12 long before requested that he be given professional dip-
13 lomatic assistance and had named Mr. KURUSU specifically; ⁴³⁹
14 Foreign Minister TOYODA had at one time made preparations
15 to send someone. ⁴⁴⁰ What more natural, so soon as there
16 were new proposals, and negotiations were to begin again,
17 than that a career diplomat should be sent? And,
18 natural or not, how could it be camouflage? Foreign
19 Minister TOGO told Ambassador Grew that Ambassador
20 KURUSU was taking no new proposals; ⁴⁴¹ Ambassador NOMURA
21 told President Roosevelt the same; ⁴⁴² and Ambassador
22 KURUSU himself after his arrival suggested as much to
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24 438. *Sapra*, §75. 442. Ex. 2927 (Tr. 25,985).

25 439. Ex. 2921 (Tr. 25,952).

440. Ex. 2922 (Tr. 25,953).

441. Exs. 2918 (Tr. 25,927) and 2923 (Tr. at 25,958).

443

1 the President. Perspicuous camouflage, sending a man
 2 who says, "I bring nothing but a new point of view" --
 3 and brings nothing else! We may let Mr. Ballantino
 4 dispose for us of the whole question of Japan's nego-
 5 tiations as "camouflage."

6 "Q And the negotiations, or the appearance of
 7 negotiations, were designed, did you think, to conceal
 8 the military preparations?

9 "A Not to conceal military preparations.
 10 Those had been obvious since July . . ." ⁴⁴⁴

11 Another of these substitutes for evidence of
 12 Japanese determination from the outset on war is the
 13 prosecution's insistence on the fact that the naval task
 14 force which later struck at Pearl Harbor was setting
 15 sail from Hitokappu Bay on about 25 November, which
 16 was also the day fixed some time earlier by the Foreign
 17 Ministry for the Ambassadors in Washington to conclude
 18 their negotiation of an agreement. The reason for this
 19 so-called deadline has been explained by the Foreign
 20 Minister, Mr. TOGO, in his testimony, ⁴⁴⁵ which shows it
 21 to have had no connection with naval operations, of which
 22 he and the government had no knowledge. ⁴⁴⁶ No evidence
 23 tends to contradict this testimony, the prosecution
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443. Ex. 2942 (Tr. at 26,037).

444. Tr. 10,965.

445. Testimony of TOGO (Tr. 36,099). The correctness of
 this explanation is accepted by the prosecution, see
 Summation SWW-21 (Tr. 41,902).

446. Id. (Tr. 35,702).

1 contention that there was a connection being based
2 solely on the coincidence of date. What is nowhere
3 explained is why, if the "deadline" was dependent upon
4 the naval movements, it should have been the day of
5 the fleet's departure. If the "deadline" had been the
6 day, say, before the attack, one could appreciate the
7 connection, there would be logic in the argument of
8 circumstances; not when it is a fortnight before. The
9 "deadline," in any event, was subsequently changed, at
10 a time when it appeared that there might be a possibility
11 of agreement on a modus vivendi,⁴⁴⁷ thus making it fully
12 apparent that there was no connection with fleet
13 operations. It is no secret that operational prepara-
14 tions had been carried forward concurrently with the
15 diplomatic negotiations since the 6 September decision,
16 at the latest;⁴⁴⁸ but those preparations, based upon a
17 conditional decision to declare war in future, in no
18 way bear upon the sincerity with which negotiations
19 were simultaneously being conducted.
20

21 82. A further word must be said of the United
22 States' attitude in the negotiations, and we have done.
23 It will be apparent from study of the conversations
24 and proposals that the American position, never

25 447. Ex. 1183 (Tr. 10,399).

448. Testimony of TOGO (Tr. 35,702).

1 conciliatory ("we never talked to them in terms of
2 the concessions we would make"), stiffened perceptibly
3 from August. This was the month of the Atlantic Con-
4 ference,⁴⁴⁹ where joint British-American action against
5 Japan undoubtedly was on the agenda.⁴⁵⁰ As the negotia-
6 tions progressed, moreover, American doubts of Japanese
7 sincerity multiplied;⁴⁵¹ America had, as we now know,
8 overreached herself in attending, not to what Japan's
9 Ambassadors said to her, but to the grotesque parodies
10 which she thought were the Ambassadors' instructions.
11 It is difficult to escape the conclusion that from this
12 time, at all events, the United States had determined on
13 yielding nothing even at the risk of war. Even before,
14 there had been baffling moods -- as when the proposal
15 for neutralization of French Indo-China was made on
16 24 July, and Japanese assets frozen on the following
17 day without any answer's having been awaited. But from
18 August the United States' position began to shift rapidly
19 and inexplicably. Where before the recognition of
20 Manchoukuo had been "a question between China and
21 Japan,"⁴⁵² America started prescribing peace terms
22 without consultation with China -- and those terms

24 449. Ex. 2322 (Tr. 17,465).

25 450. Evidence to this effect was rejected by the
Tribunal (Tr. 26,382-85).

451. Testimony of Ballantine (Tr. 11,014).

452. Id. (Tr. 10,999).

1 continually stiffer, until in the Hull Note they were
2 the terms of total defeat. Originally America's desire
3 had been only for such an agreement with Japan as would
4 assure her own interests, questions affecting other
5 countries being left for settlement with them; now the
6 United States undertook to secure the neutralization
7 of French territories and Thailand without a "by your
8 leave." America mentioned her hopes for world-wide
9 freedom of commercial opportunity; when Japan offered
10 to make them contractual, her meaning was "unclear."

11 The evidence seems to suggest two explanations
12 for this state of affairs, neither being such as to
13 convict Japan of having blocked an agreement. One was
14 suggested above,⁴⁵³ in referring to Ambassador Grew's
15 recommendations to the State Department on 6 September
16 that the opportunity of a KONOE-Roosevelt meeting be
17 seized. He had said, it will be remembered, that "it
18 is obvious . . . that no Japanese undertakings whether
19 oral or in written form can be accepted as giving a
20 complete guarantee that such undertakings can or will
21 be carried out . . .";⁴⁵⁴ it was a question whether the
22 commitments, if implemented, would be satisfactory.
23 Japan never got the chance to implement any commitment.

25 453. Supra, §33.

454. Ex. 2896 (Tr. 25,807).

455. Testimony of Ballantine (Tr. 10,992).

1 Her offers of commitments came more and more to be
2 treated as valueless because they might not be imple-
3 mented after being given. The meaning of her most
4 basic concessions of principle was never explored; it
5 was assumed that they could not be sincere. As America
6 came to feel more ready for war -- we may surmise --
7 her position became the more uncompromising, her interest
8 in the negotiations waned ever more, until at last the
9 State Department was willing to abandon untried its own
10 proposal of modus vivendi, which Mr. Hull had thought
11 right have perhaps a one-in-three chance of acceptance,⁴⁵⁵
12 for the Hull Note which was considered "unlikely" of
13 acceptance.⁴⁵⁶ Why, then, did America negotiate? "The
14 main difficulty appears to be that, while the Japanese
15 want speed and cannot yet afford to go beyond general-
16 izations, the Americans seem to be playing for time
17 and to demand the utmost precision in definition before
18 agreeing to any contract for a step of rapprochement."⁴⁵⁷
19 Though it sound like an echo of the Japanese complaints
20 of the American attitude in the negotiations,⁴⁵⁸ it is
21 Ambassador Sir Robert Craigie speaking. Can his analysis
22 be challenged?
23

- 24 455. Testimony of Ballantine (Tr. 10,992).
25 456. Id. (Tr. 10,952).
457. Ex. 2908 (Tr. 25,849).
458. Ex. 2918 (Tr. at 25,930).

1 "Playing for time"? The whole theory of the
2 prosecution of this case has been that Japan, her
3 civilian and military officials, the defendants -- the
4 "conspirators" -- conducted the Japanese-American
5 negotiations, in mala fide, nefariously, playing for
6 time to prepare for war.

7 "We wanted to keep alive the spark of peace
8 to the last split second. We wanted to clutch at
9 every straw that might make possible the continuance
10 of peace. Surely there was nothing inconsistent between
11 that objective and giving our armed forces and those
12 of our friends time to prepare adequately for self-
13 defense," ⁴⁵⁹ says Mr. Ballantine. Nor for Japan?

14 This Tribunal cannot await the verdict of
15 history, but must now determine whether it were not a
16 travesty upon the truth to say that America was forced
17 into a war with Japan. ⁴⁶⁰

18 THE PRESIDENT: Colonel Warren.

19 MR. WARREN: If the Tribunal please:

20 In presenting the summation of the case for
21 the accused DOHIHARA, it is not the intention of his
22 counsel to either affirm or deny the motivating
23

24 459. Tr. 11,010.

25 460. Note that as early as 27 November Chief of Staff
Marshall was advising Hawaii and other outlying commands
that "if hostilities cannot be avoided the United
States desires that Japan commit the first overt act."
Exhibits 2860-62 (Tr. 25,620-21).

influences brought to bear which ultimately resulted
in any particular incident with which the accused are

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1 generally charged with having perpetrated. We must
2 assume the realistic view that such instances as the
3 Manchurian Incident and the China Incident did occur.
4 While we cannot, and do not concur with the prosecution
5 in their contention concerning the various incidents,
6 their causation and effect, we must recognize that the
7 record is so voluminous that any attempt upon our part
8 to analyze the whole would but obscure the vital prob-
9 lem with which we, as the defense counsel for DOHIHARA,
10 are concerned: That is, what, if any, was the connection
11 our client had with the various incidents to which the
12 prosecution has attempted to connect him? It has been
13 our contention throughout the trial that the position
14 of General DOHIHARA has been highly overrated by the
15 prosecution; that his influence was small and that he
16 was never in a position to direct or control any person
17 who held a position of political strength, sufficient
18 to affect the destinies of Japan. It is true that he
19 did appear on the scene on several occasions but in
20 each instance, as will be shown from our further sum-
21 mation, he appeared as a subordinate officer under the
22 command of his superior officers, with orders to
23 perform a specific mission. In every instance appearing
24 of record this fact will be borne out. No person could
25 listen to the testimony in this case without arriving

1 at the conclusion that the accused DOHIHARA has a great
2 knowledge of the Chinese people, their customs, manners,
3 peculiarities and whims. It was this factor, more than
4 any other one thing, that brought to DOHIHARA the
5 prominence which the prosecution has lavished upon him
6 far beyond its actual importance. Some persons did
7 have plans which they formulated, promulgated, and in
8 many instances carried through to their ultimate con-
9 clusion. Some such plans undoubtedly could result in
10 nothing except good; and some the prosecution has
11 characterized as the machinations of departed brains,
12 in which characterization incidentally we do not con-
13 cur. When plans are formulated, it is necessary that
14 certain means be provided with which to carry them
15 out; certain instrumentalities are needed for the con-
16 veyance of thoughts, demands and counter demands. When
17 persons, who think up schemes and plan plans, happened
18 to be in the armed forces, it is only natural that
19 they should use as the instrumentality for carrying
20 out their plans those who are subordinate to them. In
21 this last category, DOHIHARA unquestionably fits.
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1 Any defense counsel, in any case, will learn
2 by bitter experience that the prosecution will distort
3 the meaning of often harmless words so that they appear
4 to have a sinister or hidden meaning. Therefore,
5 anticipating that the prosecution may choose to misin-
6 terpret our use of the words "plans" and "schemes" in
7 an attempt to show that we recognize, by their use,
8 a conspiracy, let us now put their minds at ease. The
9 words are used in their ordinary, everyday sense. The
10 idea of a conspiracy between DOHIHARA and any of the
11 accused, such as is alleged by the prosecution, has
12 always appeared more than ridiculous to us and the
13 prosecution has not presented any evidence which would
14 effect our opinion in the least.

15 The Tribunal can take judicial knowledge that
16 in every army of every nation here represented that one
17 of the cardinal virtues of an army officer is to obey,
18 without question and without hesitation, the orders of
19 his superior officer. Yet, in not one single recorded
20 instance do we find that the accused DOHIHARA ever
21 initiated any action of his own, except incidental to
22 carrying out his assigned mission. Every mission
23 he undertook was upon orders of his superiors, and only
24 after whatever plans there were had already been
25 formulated, and we shall not overlook this fact in

1 supplying to the court proper references to the
2 record. What we recognize as a virtue in our own
3 citizens, we certainly should not condemn as a fault
4 in our enemy.

5 For the purposes of this criminal prosecution,
6 the accused DOHIHARA first appears upon the scene as
7 the head of the Special Service Organization in the
8 City of Mukden. However, the prosecution while admit-
9 ting that this is true, also make vague reference to
10 the many years DOHIHARA had spent in China, but since
11 there is no evidence to that effect of a derogatory
12 nature, it does not even dignify an answer.

13 We have already made reference to the fact
14 that the prosecution often attempts to distort the
15 meaning of words so as to give them a sinister effect
16 not intended. Not only does this hold true of words,
17 but it also holds true of facts. The prosecution
18 attempts to make much of the fact that in a telegram,
19 apparently originating with the Special Service Organi-
20 zation, to which DOHIHARA was attached, there appeared
21 some words to the general effect that the names of
22 DOHIHARA and ITAGAKI was something like the mention of
23 a tiger and that the people turned pale. We have never
24 contended, and never will contend, that there were no
25 newspapers in China and Manchuria that did not dislike

1 General DOHIHARA. We have no doubt that some such
2 papers may have printed similar statements on occasions.

3 Why the prosecution would attempt, by their argument,
4 to have this Tribunal believe that the statement was
5 the statement of the Special Services Organization,

6 a. (Pros. Sum. P. BB-1) given in a bragging manner, is
7 something we cannot understand. It is so far from
8 the truth and the recorded facts that it becomes fan-
9 tastic; in fact, so fantastic that the defense never
10 even attempted to explain it by rebuttal evidence.

11 The document, which the prosecution refers to ^{b.} (Ex.
12 3177-A) was apparently of such little probative value =

13 that even the President of the Tribunal questioned
14 its value. ^{c.} (T. 28619). So little value did the
15 defense attach to it, in view of the explanations of
16 the witness AIZAWA, that we did not even press or
17 argue our objection to its introduction. ^{d.} (T.28620).

18 AIZAWA stated in substance, that the document in
19 question was one of the type where various questions
20 were put into political, economic and social categories
21 and that the subject pointed out; i. e., that the people
22 in Southern China, at the mention of the names DOHIHARA
23 and ITAGAKI turned pale, was in his opinion, an item

24 a. Pros. Sum. P. BB-1. c. T. 28619.
25 b. Ex. 3177-A. d. T. 28620.

1 taken from the newspapers commenting on these two men;
2 that the report so received from the newspapers was
3 recorded in that part of the report. The witness then
4 stated that DOHIHARA's name constantly appeared in
5 newspapers attempting to connect him with conspiracies
6 and plots of various kinds, but that as a matter of
7 fact, during the years he served under General DOHI-
8 HARA, there was not one iota of evidence of his partici-
9 pation in any such movements.^a (T. 28618;28619). There
10 seems little doubt that the origin of the statement was
11 from the newspapers and was not at all what the prose-
12 cution would have the Tribunal believe. As a matter
13 of fact, the whole thing is reminiscent, in some
14 respects, of the remarks of the prosecution some time
15 ago concerning DOHIHARA as being the Lawrence of Man-
16 churia. It just emphasizes again the attempt to con-
17 vict by innuendo rather than evidence. Although the
18 remark was made on more than one occasion, not one
19 single word of evidence was ever introduced to sub-
20 stantiate them. Even so, supposing he had been called
21 the Lawrence of Manchuria, we wonder if there might
22 not have been in prior history another Lawrence whose
23 deeds were of such greater magnitude as to cause a
24 lesser constellation in the firmament of history to
25 a. T. 28618; 28619.

1 become his namesake? Well, we dismiss the entire
2 thing for what it is worth; a preposterous assumption
3 of facts not substantiated by the evidence as broad
4 as that evidence was permitted to be.

5 The prosecution state that DOHIHARA had spent
6 eighteen years in China and that his situation there
7 had won recognition of his superiors.^{a.} (Pros. Sum.
8 PP, BB-2). We have already recognized this fact.

9 Every nation has its specialists in its State Depart-
10 ments and in its armies. The mere fact that a man
11 might be a specialist has absolutely no significance.

12 DOHIHARA, in his interrogation, admitted the fact, but
13 b.

14 (T. 15723) while we admit that he did receive recog-
15 nition from his superiors we should also like to point
16 out that he was considered by them as a man of very
17 mild character, with many friends among the Chinese.

18 c. (T. 19995). In this connection, it is rather interest-
19 ing to note that the prosecution also recognize the
20 fact that DOHIHARA was used by his superiors because of
21 his special knowledge and thus bear out the defense's
22 contention.^{d.} (Pros. Sum. PP, BB-2).

23 The prosecution attempts to make much of the
24 fact of what they term to be an intimate relation between

25 a. Pros. Sum. PP, BB-2.

b. T. 15723.

c. T. 19995.

d. Pros. Sum. PP, BB-2.

1 the accused DOHIHARA and one OKAWA, who was adjudged
2 by this Tribunal to be an incompetent. They contend
3 that DOHIHARA was deeply involved in drafting a plan
4 to set up a cabinet centering around the army with a
5 more positive policy towards Manchuria and cite for
6 their authority the testimony of OKAWA contained in
7 ^{a.} (exhibit 2177-A), the minutes of the third trial of
8 OKAWA held in the Tokyo Court of Appeals. It is
9 singular that in their summation the prosecution admits
10 that DOHIHARA was at the time at an outpost in China
11 and that he was kept busy there. ^{b.} (Pros. Sum. PP, BB-
12 2,3). There can be no question about this statement
13 because although the prosecution does not say so, a
14 scrutiny of the record will show that the incident
15 referred to occurred after the Manchurian Incident,
16 which took place on September 18, 1931, and the two
17 were supposed to have been connected in some vague
18 manner. The incident finally became known as the
19 October Incident. ^{c.} (T. 15585). General DOHIHARA was
20 at that time the Mayor of Mukden. ^{d.} (Ex. 57, Lytton
21 Report, P. 88). What the prosecution failed to point
22 out was that at the time OKAWA gave the testimony in
23 question, he was on trial for his own actions and was

25 a. Ex. 2177-A.

b. Pros. Sum. PP, BB-2,3.

c. T. 15585.

d. Ex. 57, Lytton Report,
P. 88.

attempting to vindicate himself.

1 They likewise neglected to remind the
2 Tribunal of the manner in which the testimony concern-
3 ing DOHIHARA was gotten from OKAWA. The prosecution,
4 having failed to do so, it behooves us to analyze it.
5 Prior to the incident complained of, neither the army
6 nor the cabinet had a definite policy,^{a.} (T. 15585),
7 and the idea of the promulgation of the so-called
8 October Incident had to be formulated in a short
9 period of time.

11 We shall not discuss it here, but the members
12 of the Tribunal can verify our remarks by reading the
13 record,^{b.} (T. 15585-15586). OKAWA himself knew little
14 about the plan or who was involved and at the best
15 everything he had to say about it was little better
16 than a guess on his part. At the time the controversial
17 testimony was given by OKAWA, he was being examined by
18 the Chief Justice of the Court and^{c.} (T. 15577), when
19 asked by the Chief Justice who it was who drafted the
20 ultimate plan, the witness answered that he did not
21 know. He was then asked if he did not know who was at
22 the top of drafting the plan. He stated that he had
23 an idea. At this point the Chief Justice then asked

25 a. T. 15585.

b. T. 15585-15586.

c. T. 15577.

1 the question which the prosecution insists involved
2 the accused DOHIHARA. That question was, "Are SHIGETO,
3 HASHIMOTO, ITAGAKI, and DOHIHARA involved?" and the
4 witness answered, "Yes." In answer to the next ques-
5 tion by the Chief Justice, he stated that he was the
6 only civilian involved. The Chief Justice then made
7 this observation, referring to DOHIHARA and the others
8 mentioned in the previous question: "After all, they
9 are satisfied with how things are now so what do they
10 want to do?" The witness started his next answer with
11 the words: "Their plan, I suppose" ^{a.} (T15587).

12 We invite the Tribunal to again peruse this
13 portion of the record in order to refresh its memory
14 because the record clearly demonstrates what the Chief
15 Justice of the Court had in mind and any person
16 familiar with cross-examination of a witness could
17 never be long in doubt. First he wanted to know
18 exactly how much the witness knew about the things of
19 which he was testifying. That he was satisfied in his
20 own mind the witness knew very little and was only at-
21 tempting to help himself is amply demonstrated by the
22 observation he made that DOHIHARA and the other persons
23 mentioned were satisfied with things. He was only
24 permitting the witness to further ensnare himself in
25 a. T. 15587.

1 his own entangled web of half truths and untruths.
2 How the Chief Justice knew that DOHIHARA and the other
3 men mentioned were satisfied with the way things were
4 is now shown, but if the record demonstrates any one
5 thing clearly, it demonstrates that the Chief Justice
6 knew they were satisfied and this fact alone should
7 prove that DOHIHARA had nothing to do with the so-
8 called October Incident, and in addition, he was, as
9 the prosecution posed it, busy at the outposts in
10 China. The prosecution next state that DOHIHARA was
11 appointed Chief of the Special Services Organization
12 of the Kwantung Army ostensibly for the purpose of
13 investigating the case of Captain NAKAMURA but as they
14 blandly put it, his real mission, as disclosed in his
15 interrogation was to investigate and determine the
16 strength of the Chinese forces, their training, their
17 communications and conditions of the civilian popula-
18 tion.^{a.} (Pros. Sum. PP. BB-3).

20 They give us their authority for this state-
21 ment references to the interrogation of DOHIHARA. Again
22 there is no analyzation of the testimony. In the first
23 place DOHIHARA was never the head of the Special
24 Services Organization of the Kwantung Army nor did he,
25 as they accuse him of doing, state what they said he

a. Pros. Sum. PP. BB-3.

1 did. It is well to remember that when DOHIHARA was
2 interrogated he was without the benefit of counsel and
3 was required to answer and from the way the interroga-
4 tions were put to him one receives a compelling im-
5 pression that they were put by some person whose own
6 opinion of himself far exceeded his actual ability.
7 That person, throughout the interrogation, never
8 failed to take advantage of his position and always
9 insisted on attempting to put into the mouth of DOHI-
10 HARA things he did not say or mean.

11 The occasion of which we now speak is but a
12 practical demonstration of that fact. The question
13 put to him was as to whether he still insisted that his
14 story, that his only mission was to investigate the case
15 of Captain NAKAMURA, was true. There was no evasion
16 whatsoever by DOHIHARA in answering this snide type of
17 questioning. He stated that it was not his only pur-
18 pose but that it was his most important. In the next
19 question the interrogator flatly contradicts him and
20 states he had been told on a previous occasion by
21 General DOHIHARA that such was his only purpose. How-
22 ever, DOHIHARA answered that he thought he had merely
23 told him it was his most important job, but that as
24 head of the Special Services Organization he had other
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1 duties which he outlined.^{a.} (T. 15724, 15725). The
2 prosecution's statement that DOHIHARA's primary busi-
3 ness in Manchuria at that time was for the purpose of
4 investigating and determining the strength of the
5 Chinese forces, their training, etc., is nothing but
6 an attempt to convince the Tribunal of their manner of
7 thinking, and is contrary to the record and is just
8 another attempt to get the Tribunal to believe that
9 the accused DOHIHARA was attempting to evade questions
10 put to him on his interrogation, a fact which we flatly
11 deny.

12 To prove that his primary mission was that of
13 investigating the NAKAMURA case, we could quote many
14 portions of the record. However, since the Lytton
15 Report^{b.} (Ex. 57, p. 63) includes an entire chapter
16 on the NAKAMURA case, because of its importance to the
17 relationship between China and Japan, we ask the
18 Tribunal, if there be any doubt in their minds, to
19 read that chapter. The prosecution's beautiful
20 theory falls of its own weight.

22 It is apparent that the prosecution know
23 the weakness of their argument as to the purpose of
24 DOHIHARA's appointment as the head of the Special

25 a. T. 15724, 15725.
b. Ex. 57, p. 63.

1 Services Organization at Mukden because in the very
2 next paragraph of their argument^{a.} (Pros. Sum. PP.
3 BB-4), they charge DOHIHARA with attempting to foul
4 up the NAKANURA case so that no agreement could be
5 reached. Nothing could be further from the truth,
6 but it demonstrates the attitude of the prosecution
7 to studiously attempt to enrich by their own imagina-
8 tion the facts with fiction.

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a. Pros. Sum. PP. BB-4.

This fact is shown in their summation on
 1 this point because again they circumvent the true
 2 facts. They state in substance that every effort was
 3 being made on the part of the Chinese to meet the
 4 wishes of the Japanese with reference to the NAKAMURA
 5 Case^{a.} (Prosecution summation PP BB-3 Par BB-6) and
 6 that although it was believed by the Japanese Consular
 7 authorities that a solution was near, it was DOHIMARA
 8 who continued to question the sincerity of the Chinese
 9 in an effort to arrive at a satisfactory solution.^{b.}
 10 (Prosecution Summation PP BB-4 Par BB-6). Well, again,
 11 they cannot have read the Record very clearly. The
 12 Lytton Commission never did say that the Chinese were
 13 doing everything they could to settle the NAKAMURA Case.
 14 To use the exact words of the Lytton Report, "...it would
 15 seem that diplomatic negotiations for attaining a
 16 solution of the NAKAMURA Case were actually progressing
 17 favorably up to the night of September 18."^{c.} (Exhibit
 18 57, p. 65, Par. 3). It appears, from a further study
 19 of the Lytton Report that if the Chinese were trying
 20 to settle the question so were the Japanese because
 21 it specifically states that the Japanese Consular authorities
 22 felt that an amicable solution was near. While the

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 a. Pros. Sum PP BB-6
 b. Pros. Sum. PPBB-4 Par BB-6
 c. Exhibit 57, p. 65, Par. 3

1 Report does point out that some officers, especially
2 DOHIHARA, continued to question the sincerity of the
3 Chinese this cannot be construed to mean that these
4 same officers were not attempting to effect a
5 satisfactory solution. In the same paragraph, where
6 that statement appears, we find this statement,
7 "Consul General HAYASHI, Mukden, was reported on
8 September 12th, 13th, to have reported to the Japanese
9 Foreign Office that an amicable solution would probably
10 be made on the return of the investigators to Mukden."

11 This statement by Consul General HAYASHI was
12 based upon the admission of General Yung-Chen who had
13 finally admitted that Chinese soldiers were responsible
14 for the death of Captain NAKAMURA.^a (Ex. 57, Lytton
15 Report, P. 65, Par. 3). Without quoting the Record,
16 because the point is not controversial we know that
17 General DOHIHARA was one of the agents referred to and
18 that he had been called to Tokyo to report on the
19 progress of the NAKAMURA Case and on September 18th
20 was on his return to Mukden.

21 It is interesting to note that in a conference
22 on the 18th of September, the Chinese for the first
23 time formally admitted their responsibility for the
24 death of Captain NAKAMURA. It is true that unofficially

25 a. Ex. 57, Lytton Report, p. 65, Par. 3

1 General Yung-Cher stated that the Chinese were
2 responsible, but the earliest date given anywhere in
3 the record that even unofficially an admission had
4 been made was on the 12th of September. Be that as
5 it may, it does not change the picture one iota. In
6 view of a correct analyzation of the testimony which
7 we feel we have given and which we invite the Tribunal
8 to test by a study of the record, it does not appear
9 that the Chinese had done one single thing up until
10 that time to indicate their sincerity with reference
11 to a settlement of the case and if the Japanese doubted
12 Chinese sincerity they undoubtedly had a perfect right
13 to do so. (Lytton Report, Ex. 57, P. 65). We again
14 refer the Tribunal to the contention of the prosecution
15 that DOHIHARA's primary mission in China was, at that
16 time, not the NAKAMURA Case and now ask whether that
17 contention is sound.

18 The prosecution seems to think it of prime
19 importance that the defense witness SHIBAYAMA thought
20 that Chang-Hsueh-Liang was sincere in his efforts to settle
21 the NAKAMURA Case. We can see no importance whatsoever
22 in this fact. SHIBAYAMA was advisor to Chang at the
23 time and it would be only natural that Chang would
24 attempt to convince him that such was so. However, that
25 a. Lytton Report, Ex. 57, p. 65.

1 Does not mean that the Chinese actually were sincere.
2 The prosecution state that ITAGAKI and other staff
3 officers of the Kwantung Army were using the NAKAMURA
4 Case as a pretext to start military actions in Manchuria
5 and cite the Lytton Report. This claim is wrong.
6 What the record actually states is that the Chinese
7 claimed that the Japanese used the NAKAMURA Case as
8 a pretext for the occupation of Manchuria and that
9 they (the Chinese) denied the contention of the Japanese
10 that there was insincerity or delay on the part of the
11 Chinese officials in dealing with the Case: ^{a.} (Lytton
12 Report, Ex. 57, p. 65, last par.) The Chinese made
13 that statement in spite of the fact that they had
14 already appointed one commission which did nothing
15 and then, because of pressure, appointed a second
16 commission. ^{b.} (Lytton Report, Ex. 57, p. 65, 2nd par.).
17 The mere fact that the Chinese claimed that the Japanese
18 were using this as a pretext does not make it so then
19 or now. Without citing the record we ask the Tribunal
20 to recall to mind the fact that there were over 300
21 unsettled claims at that time and the NAKAMURA Case
22 was but "the straw that broke the camel's back."

24 Since the prosecution attach great weight to the

- 25 a. Lytton Report, Ex. 57, p. 65, last par.
b. Lytton Report, Ex. 57, 2nd par.

1 fact that KOHIHARA is supposed to have made statements
2 in the press advocating the settlement of all pending
3 issues, if necessary by force, and inasmuch as that
4 statement by the prosecution is somewhat substantiated
5 by the Lytton Report^{a.} (Ex. 57, p. 66), we feel it
6 necessary to discuss it briefly.

7 It must be borne in mind that the Japanese
8 public was highly aroused, not only by the NAKAMURA
9 Case, but the some three hundred other incidents, and
10 the Lytton Commission by no means attempted to lay
11 all the blame on the Japanese, but stated candidly that
12 each side accused the other of having violated,
13 unilaterally interpreted, or ignored the stipulations
14 of the Sino-Japanese agreements. They also recognized
15 that the three hundred so-called cases were situations
16 arising out of broader issues, which were rooted
17 fundamentally in irreconcilable policies, and "Each
18 side had legitimate grievances against the other."^{b.}
19 (Ex. 57, PP. 66).

20 The report goes on to relate that there
21 was effort to settle these questions through normal
22 procedure of diplomatic negotiations and peaceful
23 means, and that those means had not been exhausted, but

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25 a. Ex. 57, p. 66
b. Ex. 57, PP. 66

1 that long delays had put a severe strain on the patience
2 of the Japanese.^a (Ex. 57, P.66). In this connection
3 it is interesting to note that the Lytton Commission
4 states that DOHIHARA was quoted by the press as the
5 advocate of the solution of all pending issues and
6 does not confine his statements to the NAKAMURA Case.
7 We do not know what the newspaper stories actually
8 contained, or in what manner they quoted him, but
9 certainly if he did make such statements to the press,
10 he was not alone in his belief that the disputes
11 would have to be settled.

12 In order to fully appreciate the mental
13 outlook of DOHIHARA at that time it is necessary to
14 consider the then situation in China with reference to
15 local armies, civil war, banditry and the attitude and
16 power of the Central Government. We submit without
17 further comment the following extracts from the Lytton
18 Report.

19 "Its armed forces are also identified with
20 their commander, not with the nation. The transfer
21 of a commander from one army to another by order of
22 the Central Government is, in many cases impossible.
23 The danger of civil war must continue to exist so long
24 as the Central Government lacks the material means to
25 a. Ex. 57, P. 66

1 make its authority swiftly and permanently felt all
2 over the country."

3 "The problem of banditry which may be traced
4 throughout the history of China, and which exists
5 today in all parts of the country, is subject to the
6 same considerations. Banditry has always existed
7 in China and the administration has never been able to
8 suppress it thoroughly." (Ex. 57, p. 19, last six
9 lines of para. 2, and the first 4 lines of para. 3.)

10 ...in addition to the natural desire to
11 be free from any outside control in a people that has
12 become conscious of national unity, the influence of
13 the Kuomintang has introduced into the nationalism of
14 China an additional and abnormal tinge of bitterness
15 against all foreign influences, and has expanded its
16 aims so as to include the liberation of all Asiatic
17 people still subject to 'imperialistic oppressions'.
18 (Ex. 57, p. 18, para. 2) "The reluctance of China to
19 receive foreigners and her attitude toward those who
20 were in the country was bound to have serious
21 consequences..." "the inevitable conflict of two
22 irreconcilable conceptions of respective rights and
23 international relations led to wars and disputes..."
24 (Ex. 57, p. 14, para. 4 & 5) "The recrudescence of
25 civil war favored the growth of Communist influence in

1 the period between 1928-31..." "The Communist forces
2 had operated in parts of Kiangsi and Hunan Provinces,
3 and were then reported to have caused in two or three
4 months the loss of 200,000 lives and of property valued
5 at about one billion dollars (silver)." (Ex. 53, p. 21,
6 para. 4).

7 We submit that DOHIHARA's statement, under
8 the circumstances, is one that could reasonably be
9 expected from a military man and the Tribunal can
10 take judicial knowledge of the attitude of present
11 military leaders.

12 The prosecution admit that DOHIHARA was not
13 in Mukden at the time the Mukden Incident broke out
14 but they hint that regardless of the evidence, he still
15 was a responsible party; that even though DOHIHARA
16 himself was not present, his office was the center of
17 invasion operations, and that his office served as an
18 indispensable link in the chain of communications
19 between the outposts and headquarters of the Kwantung
20 Army, and was in exclusive possession of a special
21 code by which communications to the Commander-in-Chief
22 were to be made.^{a.} (Pros. Sum P. BB-5)

23 Part of this contention is true, but the
24 prosecution did not attempt to analyze the testimony
25 a. Pros. Sum. P. BB-5).

1 or they undoubtedly would not have made the statement
2 they did. The reason the office of the Special Service
3 organ was used as headquarters for the Kwantung Army
4 that night was purely coincidental. ITAGAKI, on
5 that evening, had been to visit with General TATEKAWA,
6 and was returning to his billet. As it was too early
7 to retire, he decided to visit the office of the
8 Special Service organ. ^{b.} (T. 30,351-352). As he
9 was on the point of leaving, he received a telephone
10 call reporting the outbreak of the incident, which
11 prevented him from returning to his billet. He being
12 the responsible officer, it would have made no difference
13 where he had been; that place would have become, for
14 all intents and purposes, the headquarters. That fact
15 that he later approved the plans of SHIMAMOTO and HIRATA
16 while in the office of the Mukden Special organ is of
17 no importance. The assertion that the Special Service
18 organization had a special code by which communication
19 with the Commander-in-Chief was to be made is not borne
20 out by the record. ITAGAKI, as a witness, did state
21 in substance that this Special Service organ had a
22 telegraph or code telegram form, and as not everybody
23 had this form, if there was any need to send a coded
24 military telegram, it was necessary to call this Special
25 ^{b.} T. 30,351-352.

1 Service Organ. But, in this connection he further
2 states that whenever any negotiations relating to
3 military matters had to be conducted, the important
4 matters were relayed to the Consulate General, and
5 only the less important or minor matters were dealt
6 with directly by this Special Service Organ.^a (T. 30,353).
7 There is absolutely no evidence to connect DOHIHARA
8 in any manner with any scheme to bring about the Mukden
9 Incident and the prosecution know it. Their statement
10 to the effect that MORISHIMA's testimony that DOHIHARA
11 had no connection with the incident merely dispels
12 the assumption that as one of the original schemers
13 DOHIHARA was not likely to have taken part personally
14 in the activities of September 18th,^b (Pros. Sum. PP.
15 BB-5) is but wishful thinking and has no foundation
16 in the evidence.

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25 a. T. 30,353
b. Pros. Sum. PP. BB-5.

1 The remarks of the prosecution concerning
2 DOHIHARA's activities as Mayor of Mukden are hardly
3 worthy of answer. They again refer to the Lytton
4 Report to show that upon him taking over the post of
5 Mayor of Mukden, a Special Emergency Committee was formed
6 with the majority of the members being Japanese. This
7 we do not deny, but this was necessary because most of the
8 prominent officials and leading members of educational
9 and commercial communities who could afford to do so
10 left immediately. The police and even the prison wardens
11 disappeared, and municipal, district and provincial ad-
12 ministrations completely broke down; public utility
13 companies, the busses, the tramways, the telephones, and
14 telegraph services ceased to function; banks and shops
15 kept their doors closed, ^{a.} (Ex. 57, p. 88). Had
16 DOHIHARA wanted Chinese to assist him, he would have
17 hardly been able to obtain them. However, within three
18 days, DOHIHARA, by his administration of the city, had
19 it functioning normally; civil administration was re-
20 stored; several hundred police and most of the prison
21 wardens were brought back and public services were re-
22 stored.
23

24 The prosecution has consistently asserted that
25 the Chinese people despised and hated DOHIHARA, yet here
(a. Ex. 57, p. 88.)

1 we have the uncontroverted proof that persons, who had
2 fled apparent danger, returned within three days. It
3 can only be assumed that those who fled did so because of
4 the Japanese. By no stretch of the imagination can it
5 possibly be believed that those persons would return from
6 comparative safety, which they must have reached, unless
7 they had faith in the person who took over the admini-
8 stration of their city. The thing the prosecution fails
9 to mention is that the Lytton Commission states as a
10 positive fact that "on October 20th, the reins of the
11 municipal government were restored to a qualified
12 Chinese body. . ." ^{a.} Although the prosecution states
13 that the assumption of the mayoralty of Mukden by
14 DOHIHARA is significant because it was the first time an
15 officer in the Japanese service took over the admini-
16 stration of a city in China, to have failed to do so
17 would have been far more significant. "The immediate
18 necessity was the organization of a municipal government
19 and the restoration of the ordinary civic life of the
20 city." ^{b.} It was not a question of significance or any-
21 thing of the kind. It was a question of absolute neces-
22 sity.
23

24 Why then was DOHIHARA selected? The reasons
25 should be and are obvious; no person would have dared

(a. Ex. 57, p. 88.

b. Ex. 57, p. 88.)

1 undertake the reorganization of the completely disrupted
2 city of Mukden, with any hope of success, unless that
3 person was known and liked by the citizens. In addition
4 to this vital qualification which would, of necessity,
5 have to be present in a person undertaking that respons-
6 ibility, it also required a person who had deep knowledge
7 of the manners, customs and language of the Chinese.

8 Under the circumstances it was only natural that
9 DOHIHARA would be chosen as the most likely person to
10 succeed in a reasonably short period of time.

11 That he was able to do so is amply shown and the
12 record is a testimonial to his success.

13 THE PRESIDENT: We will recess for fifteen
14 minutes.

15 (Whereupon, at 1445, a recess was
16 taken until 1500, after which the proceed-
17 ings were resumed as follows:)

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1 The witness KATAKURA, Tadashi state in sub-
2 stance that Colonel DOHIHARA was appointed the Mayor of
3 the city temporarily on the condition he would serve
4 until a competent person could fill that position.
5 The accused MINAMI, upon being cross-examined by the
6 prosecution relative to the fact that DOHIHARA was
7 appointed the Mayor of Mukden contrary to his orders,
8 stated in substance that although the Cabinet had de-
9 cided no military administration was to be established
10 and that such decision was communicated to Commander
11 HONJO of the Kwantung Army, he did not believe that
12 the appointment of DOHIHARA as Mayor of Mukden was a
13 violation of the order. On the contrary, in light of
14 the situation and because of the acute state of disorder
15 prevailing in that major city, it was, as a matter of
16 fact, unavoidable.^a

17 In reviewing the testimony of both General
18 MINAMI and the witness KATAKURA there is no question
19 but that the appointment of DOHIHARA as Mayor of Mukden
20 was for a short period of time and was not intended as
21 the establishment of a military regime. As a matter of
22 fact, the testimony throughout reflects that DOHIHARA
23 had no military assistance whatsoever.

24 We again assert that it is preposterous to
25

a. T. 18,926-18,927.

a. T. 19,879-80.

1 believe that any person could reach the conclusion that
2 the Chinese, police officers and prison warders in-
3 cluded, would flee from the wrath of the Japanese and
4 reach comparative safety, and then return in a period
5 of three days to the very seat of the recently fled
6 danger unless they had implicit and absolute confidence
7 in the man the enemy had selected to restore order and
8 peace. This fact standing alone should be sufficient
9 to convince any court of justice beyond a reasonable
10 doubt that DOHIHARA was not universally hated and
11 distrusted by the Chinese people as the prosecution
12 would have you believe. That the members of the Lytton
13 Commission did not believe this to be true is reflected
14 in their high praise of his activities. That Lord Lytton
15 personally had great respect and admiration for General
16 DOHIHARA can hardly be denied. In the interview of
17 record which he and members of the Commission had on
18 May 3, 1932 in Changchun, Lord Lytton stated:

19 "We would like to follow the story out. We
20 understand the General took over the civil administra-
21 tion at Mukden immediately after the events of September
22 18. Would he please describe conditions at that time,
23 state what steps he took, etc. ...?"
24

25 a. Ex. 3180, Ex. 3180-A, P. 2; T. 28,667-28,669.

1 At that point General DOHIHARA explained what
2 had been done and his contribution thereto and as soon
3 as he had completed his response to the question posed
4 by Lord Lytton, Lord Lytton then continued:

5 "I expect the General is much too modest in
6 regard to his activities, for I understand that at the
7 end of a month everything was brought back to peaceful
8 conditions and he felt he could then hand matters over
9 to some one else." ^b

10 In reading the Lytton Report and other docu-
11 ments pertaining thereto, one does not receive the
12 impression that Lord Lytton was given to flattery for
13 the sake of flattery alone. On the contrary, it would
14 appear that he was a sincere man, honest in his endeavor
15 to carry out the high commission which had been foisted
16 upon him and did not need to use flattery to assist him
17 to that end. Even if it were possible to arrive at
18 the conclusion that his words were idle, there are
19 other facts which we can now view in retrospect and
20 which are startling in their implications as to the
21 feeling held by the Commission towards DOHIHARA. The
22 Commission, in its report, with reference to statements
23 made by General DOHIHARA, would almost without excep-
24
25 b. Ex. 3180, Ex. 3180-A, p. 4.

1 tion either adopt his views or give them great considera-
2 tion. For instance, with reference to the NAKAMURA
3 Incident, the Report states:^a

4 "Numerous statements of Japanese military
5 officers, however, especially those of Colonel K.
6 DOHIHARA continued to question the sincerity of the
7 Chinese ..."

8 Later the Commission set out certain con-
9 clusions which it had reached, and one of them was:^b

10 "As a corollary to the above, it is necessary
11 that provision should be made for facilitating the
12 prompt settlement of minor disputes as they arise."

13 "Unquestionably in this instance the commis-
14 sion recognized the sincerity of his feeling in believ-
15 ing that the Chinese were not sincere and there seems
16 to be every reason to suspect that General DOHIHARA's
17 opinion concerning the Chinese attitude at that time
18 was absolutely correct.

19 Throughout the entire Lytton Commission Report
20 there is no derogatory remark made concerning DOHIHARA.
21 On the contrary, the Commission appears to have gone
22 further than was necessary in specifically mentioning
23 his activities in a favorable light. The fact that he
24 was mentioned on more than one occasion only tends to
25

a. Lytton Report, Ex. 57, p. 65.
b. Lytton Report Ex. 57, p. 130

1 show that great weight was given his opinion. As can be
2 seen by reading the whole of the Report, the Commission
3 bears out, by the recitation of facts and in very favor-
4 able terms, the testimony of defense witnesses that
5 whenever General DOHIHARA's troops entered an area,
6 business continued as usual and that the Chinese people
7 trusted and cooperated with him to the fullest extent.^e

8 The prosecution, as was expected, has attempt-
9 ed to show that General DOHIHARA instigated, initiated,
10 and carried through a plan for the kidnapping of Henry
11 Pu-Yi, and rely almost entirely on a series of tele-
12 grams originating with one KUVAJIMA, Kazue. Although
13 KUVAJIMA was available to the prosecution and resided
14 in the city of Tokyo, they did not produce him before
15 the Tribunal for reasons which will become more obvious
16 as we proceed with our summation.

17
18 However, we should like at this time to re-
19 call to the mind of the Tribunal that there came a
20 time in the presentation of the defense case when,
21 because of mechanical difficulties, we were forced to
22 request a continuance in order to avoid a breakdown
23 which was then imminent. Mention is made of this fact
24 because we wish to remind the Tribunal that, as the trial
25 a. T. 28,680; 28,694; 28,707

1 progressed the Tribunal realized that if it continued
2 to accept evidence of certain types the trial could
3 drag on for years. As the Tribunal knows, the defense
4 had processed, or were processing, evidence of the type
5 which the Court had in mind, among which were numerous
6 newspaper and periodical reports. We had spent con-
7 siderable time and effort and did discard, in defer-
8 ence to the wishes of the Tribunal, practically all of
9 our evidence of that type. We assumed then, and now
10 assume, that the Tribunal was not interested in news-
11 paper reports as evidence. But since much evidence,
12 based on newspaper reports, rumor, and hearsay was in-
13 troduced by the prosecution and still remains in evi-
14 dence, we feel it necessary to discuss them and point
15 out what we consider to be fatal defects. When this
16 has been done we ask the Court to completely disregard
17 them as having no evidentiary and certainly no proba-
18 tive value.

19
20 As the Tribunal will recall, on the 28th of
21 August 1946, a number of telegrams were introduced by
22 the prosecution dealing with the accused DOHIHARA and
23 his alleged kidnaping of the Emperor Pu-Yi himself.
24 In passing, it is noteworthy that the prosecution,
25 although Pu-Yi was their witness, failed utterly to
mention his testimony in regard to the activities of

1 DOHIHARA with reference to his alleged abduction. The
2 truth is, of course, they did not dare to do so be-
3 cause his testimony causes their carefully planned house
4 of cards to tumble to the ground.

5 It is hard to conceive, after having heard
6 the testimony of Pu-Yi, and having been able to evaluate
7 and observe his actions and demeanor on the witness
8 stand, that any person could draw a conclusion from the
9 evidence that he was kidnapped, or for that matter,
10 that undue persuasion was used upon him. However, we
11 cannot assume that the Tribunal will accept our viewpoint
12 and consequently we have no choice except to analyze
13 his testimony on that score.

14 No person should know better whether the
15 accused DOHIHARA kidnapped him than the person who was
16 supposed to have been kidnapped. While this counsel
17 has no confidence in the truth or veracity of Pu-Yi, he
18 was nonetheless a witness for the prosecution and they
19 are bound by his testimony. But regardless of our
20 candidly expressed opinion of his testimony, there
21 could be no reason whatsoever for him to tell an un-
22 truth concerning the activities of DOHIHARA; yet in
23 his testimony he mentions DOHIHARA only a few times.
24 Despite the fact that the telegrams just mentioned
25 repeatedly referred to DOHIHARA as having conversa-

1 tions with Pu-Yi and attempting to kidnap him, such
2 conversation, if there was more than one, apparently
3 did not register with Pu-Yi. We have already discussed
4 the activities of DOHIHARA while he was the Mayor of
5 Mukden and therefore know that he could not have spent
6 any considerable time in Tientsin even had he wanted
7 to, because the very physical nature of the job he was
8 required to do in Mukden precluded any such possibility.
9 To have carried out all the manifold operations which
10 the prosecution has attempted to prove he engineered .
11 during the time he was Mayor of Mukden would have been
12 impossible and even the prosecution does not claim that
13 he is "Superman"! That DOHIHARA went to Tientsin and
14 talked with Pu-Yi we do not deny. However, so little
15 did Pu-Yi think of DOHIHARA's visit to him that he
16 never mentioned it in his testimony although he was
17 given ample opportunity to do so if he had remembered
18 it. Pu-Yi was asked this direct question concerning
19 the period of time DOHIHARA was in Tientsin and specifi-
20 cally around the time when the September 18 Incident
21 broke out:

22
23 "Q Did you receive a visit from any promi-
24 nent official about that time?

25 "A That time the Japanese Commander of the
Japanese garrison forces in Tientsin, by the name of

1 KASHII, came to see me." ^a

2 Pu-Yi then relates the conversation he had
3 with KASHII, and when later asked by the prosecution
4 whether he went to Port Arthur, and what happened, he
5 stated that he went under the compulsion of General
6 KASHII, that he was compelled by KASHII to go to Port
7 Arthur. ^b

8 DOHIMARA, in his interrogation, which is in
9 evidence, admits that he did have a meeting with Henry
10 Pu-Yi in Tientsin in October 1931 when he was the
11 Mayor of Mukden. He states that he went there for
12 the specific purpose of contacting Pu-Yi; that he was
13 sent by the Kwantung Army under orders; that General
14 HONJO was the Commander of the Kwantung Army and that
15 General ITAGAKI, then Colonel ITAGAKI, was Chief of the
16 Second Section of the General Staff; that his orders
17 to proceed to Tientsin were issued by General HONJO,
18 but the detail of his meeting with Pu-Yi was arranged
19 by Colonel ITAGAKI, and that, in substance, his instruc-
20 tion was to convey to Pu-Yi that should he, Pu-Yi, re-
21 turn to Manchuria the Kwantung Army would welcome his
22 return. When asked if he was to suggest to Pu-Yi that
23 the reason the Kwantung Army would welcome him back
24

25 a. Tr. p. 3955
b. Tr. 3956

1 was because they would like to have him head the new
2 government, DOHIFARA stated that he believed the Kwan-
3 tung Army must have had that idea: however, he himself
4 had no such idea. He admitted that perhaps Pu-Yi,
5 upon receipt of the message, which he was ordered to
6 deliver, might conceive that idea. He also stated
7 that the plan was not his but that upon receipt of
8 instructions from the Kwantung Army he felt perhaps
9 such things would be required to settle the Manchoukuon
10 turmoil. As for himself, he thought more about the
11 many factions competing against each other and other
12 disturbances than he did of what the Chief of the
13 Second Section, that is, ITAGAKI, had told him at
14 that time. He also stated that he was warned not to
15 force Pu-Yi to return to Manchoukuo, that if Pu-Yi
16 wanted to come that would be fine, but that he was
17 definitely told it would not be necessary to bring him
18 back forcibly, because, although he did not know, per-
19 haps the Chief of the Second Section might have had some
20 other idea to control the situation in Manchuria, even
21 though Pu-Yi did not return.^a The analyzation of the
22 interrogations taken from the accused DOHIFARA and in-
23 troduced in evidence by the prosecution is interesting.
24

25 It reflects the feeling the prosecution had

a. Tr. p. 15,726, 15,727, 15,728

1 when they were given a free reign to question the
2 accused without benefit of counsel. They felt then,
3 and unquestionably feel now, that DOHIFARA never kid-
4 napped Pu-Yi and never went on any such mission. How
5 do we know this? The prosecution would have questioned
6 him on that score and brought his answer and laid it
7 before the Tribunal. This they did not do, and this
8 one single act of omission stands as an indictment of
9 their sincerity.

10 In cross-examination Pu-Yi does specifically
11 mention the accused DOHIFARA. He states that he re-
12 ceived a fruit basket in which there was a bomb bear-
13 ing a Chinese name card, and that "There was reason
14 for the inference that the fruit basket incident was
15 instigated by DOHIFARA." He goes on to say, "Of course
16 what I heard can be only considered as hearsay."^a
17 So we have this strange paradox in the prosecution
18 argument: DOHIFARA was sent to Tientsin for the pur-
19 pose of conveying a message urging the return of Pu-Yi
20 to Manchuria to act as Emperor and to kidnap him if
21 necessary, and Pu-Yi not even remembering the incident
22 sufficiently to give testimony on it but asserting, on
23 the contrary, that it was his belief that DOHIFARA
24 attempted to assassinate him by sending him a bomb in a
25 a. Tr. p. 4124

1 basket of fruit. What are we going to believe; did
2 DOHIHARA go to Tientsin for the purpose of kidnapping
3 Pu-Yi or for the purpose of killing him? To assert
4 that a fruit basket was sent to Pu-Yi for the purpose
5 of frightening Pu-Yi into doing what Pu-Yi already
6 wanted to do, in the face of the testimony before this
7 Tribunal and in the face of Pu-Yi's testimony, is utter-
8 ly ridiculous. However, it is interesting to note that
9 none of the testimony on the part of the prosecution
10 or the defense either directly or by inference ever
11 connected the accused DOHIHARA with Pu-Yi after the
12 alleged kidnapping. As a matter of fact, Pu-Yi states
13 that all of his dealings after this alleged kidnapping
14 by General KASHII, was with the then Colonel ITAGAKI.
15 It is further interesting to note that, in his examina-
16 tion concerning his trip from Tientsin to Port Arthur,
17 Pu-Yi never one single time mentioned the name of
18 DOHIHARA, although other prosecution evidence does.
19 However, this question is moot, because the prosecution
20 admits in their argument that DOHIHARA did not accom-
21 pany Pu-Yi.^a

22 At this time we will return to the discussion
23 of the telegrams previously mentioned. The true type
24 of evidence they actually portray will be revealed
25
a. Pros. summation BB-20.

1 upon analyzation of the text of the telegrams them-
2 selves.

3 The first that we will discuss is exhibit
4 ^b300. The prosecution base much of their argument on
5 this telegram and quote portions of it, but not all of
6 it. Part of that which they do quote is wrong.^c

7 The original translation of the telegram, as introduced,
8 was changed by the Language Arbitration Board when the
9 prosecution attempted to impeach the witness KUWAJIMA
10 upon it.

11 As will be pointed out, the witness stated
12 in his affidavit that he had talked with DOHIHARA on
13 two occasions, whereas the telegram as originally
14 translated stated that he had deliberately talked with
15 him on several occasions. The word "several" was
16 changed to the word "two,"^a and although the prosecution
17 in their argument adopted all changes except one by
18 the Language Arbitration Board, that one which they
19 did not adopt was the changing of the word "several."
20 The failure to make this one change would of course
21 lead one to believe that their attempted impeachment
22 of the witness was successful and unless the reference
23 just cited was brought to the attention of the Tribunal,
24 a wholly erroneous idea could be obtained. Why the
25

b. Tr. 4395-6

a. Tr. 28,666

c. Proc. sum. p. BB-12

1 prosecution failed to substitute this one word we do
2 not know, but assume that it was an error. However,
3 it does have a direct bearing upon the prosecution's
4 argument with reference to the testimony of KUYAJIWA.

5 The prosecution have assumed the position
6 that the telegram contains a recitation of facts
7 because there appears in the telegram a statement to
8 the effect that a secret investigation revealed certain
9 things. This cannot be accepted, because the witness
10 KUYAJIWA, who sent the telegram, stated in his affi-
11 davit that in order to understand the then existing
12 situation, it was necessary to realize that there was
13 friction between the Foreign Office and the Kwantung
14 army and that the army was acting independently of the
15 Foreign Ministry and consequently he, KUYAJIWA, received
16 no official information from the army as to the activi-
17 ties of any of its members and had no means by which
18 he could do so. He further stated that he was far too
19 busy to conduct any personal investigation of the
20 actions of DOHIHARA and had to depend upon his subord-
21 inates to collect whatever information they could get
22 and from whatever sources available. The witness then
23 outlined the sources of such information as newspaper
24 articles, conversations held with various people, rumors,
25 and, in short, any information which might tend to

1 throw light upon the activities, in this instance, of
2 DOH HARA. After having received this information from
3 all the questionable sources named, he then stated
4 that he sifted the information and drew his own con-
5 clusions.^a

6 KUWAJIMA specifically mentions in his affi-
7 davit that the telegram in question^b was one of those
8 which had been compiled from information^c so obtained.
9 The conclusion of the prosecution^e that KUWAJIMA's
10 testimony was totally incredible because he had per-
11 sonally sifted information from whatever sources and
12 drawn his own conclusions, is in itself an incredible
13 conclusion on the part of the prosecution, because the
14 witness also stated that the sources of information
15 which he outlined were the only sources he had and
16 that with the great mass of information it was im-
17 possible for him to check the authenticity of such
18 sources; that he had to do the best he could under the
19 circumstances as he had no other personal information.^b

20 Although, as previously pointed out, the
21 prosecution quotes at length from the telegram in ques-
22 tion, it is noteworthy that they utterly failed to even
23 mention, much less quote, the portion of the telegram
24

25 a. Tr. 28,649, 28,650

b. Tr. 300. tr. 28Hq

c. Pros. sum. p. BB-14

d. Tr. 28,650

1 which substantiates the testimony of KUYAJIMA and so
2 we shall quote it:

3 "As in the last paragraph of my telegram
4 No. 743 to Bureau Chief TANI, the Chinese have been
5 concerned about DOHIHARA's intrigue since his arrival
6 in Tientsin. It may be for this reason that I believe
7 the recent riot is closely connected with him. I con-
8 clude that his movements hereafter require close atten-
9 tion."

10 There you have it in a nutshell. KUYAJIMA
11 himself did not know at that time why he believed
12 those things about DOHIHARA which he wrote in the
13 telegram, but he thought maybe he believed them simply
14 because the Chinese were perturbed. With this state-
15 ment in the telegram and with the testimony of KUYAJIMA
16 it can be readily seen that no court would accept the
17 telegram as evidence unless it be a court with extra-
18 ordinary powers, and certainly it should not be worthy
19 of consideration in a case of this magnitude.

20 The prosecution cannot be serious in their
21 contention that KUYAJIMA was telling an untruth about
22 the source of the information which comprised the tele-
23 grams which he sent because they had a witness MORISHIMA

24
25 e. Ex. 300, tr. 4394-7

1 Morito, who was the First Assistant to the Consul
2 General and who stated in substance "that in order to
3 effectively perform the duties and functions of the
4 Consulate General's Office, they had to avail them-
5 selves of all accessible channels of information":
6 and he specifically states that it was the duty and
7 responsibility of their office to draw conclusions
8 from information so obtained and to advise the Japanese
9 Government.
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1 The testimony of MORISHIMA was given with ref-
2 erence to similar telegrams of the type mentioned by
3 KUTAJIMA. MORISHIMA was Assistant Consul General and
4 Acting Consul General from December 1931 to December
5 1932 at Mukden. It is true that he does state in his
6 affidavit that among the sources of information avail-
7 able to him was the Consular Police. We wish to dis-
8 cuss this and, in connection with the discussion, refer
9 the Tribunal back to the so-called secret investigation
10 which exhibit 300 mentions. It can be assumed that, if
11 the Consul General conducted an investigation, he would
12 do so through the Consular Police. For this reason it
13 is important to find out exactly how much faith could be
14 placed in the reports of the Consular Police. During
15 the cross-examination, the President of the Tribunal
16 asked the witness KUTAJIMA a question as to whether
17 the Consular Police were trustworthy men, and the
18 witness answered in substance that the Consular Police
19 brought much information to his office daily and it was
20 not to be trusted to the extent that it could be used
21 immediately for reporting purposes,^a and so, obviously,
22 no credit can be placed in this so-called secret
23 investigation. So much for prosecution exhibit 300.
24 We will now return to the prosecution summation where
25

a. T. 28,655

1 the other telegrams in the series were introduced and
2 will analyze them in the same order as they appear in
3 the summation.

4 The first telegram in the series which the
5 prosecution cite is exhibit 288 and refers to the
6 alleged kidnapping of Pu-Yi by DOHIHARA. Since we
7 have already covered the general argument with refer-
8 ence to this situation fully, we will merely point out
9 that the telegram contains nothing except a condensation
10 of a published report of a telegram printed in a news-
11 paper. The exhibit itself starts with the words, "The
12 Chinese Newspaper of the 2nd inst. published a telegram
13 . . ." Further on in the body of the telegram we also
14 find these words, "The Newspaper said . . ." We submit,
15 in view of the origin of the information contained in
16 this telegram, that it has no probative value whatsoever.
17 The prosecution attempted to prove by the telegram that
18 DOHIHARA went to Tientsin on a secret mission, pointing
19 out that Pu-Yi testified he was annoyed by a series of
20 threats and that Goette testified that DOHIHARA was in
21 North China at the time a fruit basket containing a
22 bomb was sent to the home of Pu-Yi.^a This evidence is
23 so weak it does not even dignify a further analvzation.
24

25 The next telegram which they cite is exhibit

a. T. 3729-3730.

1 286.^a The prosecution attempt to show by this telegram
2 that KUWAJIMA, Consul General in Tientsin, had previously
3 told DOHIHARA that the creation of an independent state
4 of Manchuria was contrary to certain provisions of the
5 Nine-Power Treaty.^b This telegram does not indicate
6 anything of the sort and is a telegram from Foreign
7 Minister SHIDEHARA to Consul General KUWAJIMA at
8 Tientsin in which SHIDEHARA outlines the position of
9 the Foreign Office and does not even mention DOHIHARA's
10 name.^c It merely reiterates what we already know and
11 that is that there was friction between the Foreign
12 Office and the Army with reference to the establish-
13 ment of the state of Manchukuo. In the telegram
14 SHIDEHARA cautions KUWAJIMA as follows: "Such being
15 the case, I ask you to keep the above well in mind and
16 do your utmost to stop the abduction of Emperor
17 Hsuan-Ung on one hand, and on the other hand, earnestly
18 propose to the Emperor in a suitable way to be prudent,
19 and I also ask you to be on guard."^d This paragraph
20 is significant. If the Foreign Office actually believed
21 that Pu-Yi was to be kidnapped, why then should KUWAJIMA
22 be enjoined to earnestly propose to the Emperor to be
23

- 24 a. T. 4356-8
25 b. Pros. Sum. F. BB-11
c. " 4355
d. " 4368

1 prudent? It is so significant that we ask the Tribunal
2 to pay particular attention to the fact that KUWAJIMA
3 was specifically enjoined to speak with the Emperor Pu-Yi.

4 The next telegram is exhibit 289. This one
5 refers to the preceding telegram and in it the Consul
6 General at Tientsin is reporting to the Foreign Minister
7 in Tokyo that he had attempted to persuade DOHIHARA to
8 their way of thinking but that DOHIHARA insisted on
9 several points, which we do not consider important
10 and therefore will not discuss at this time. However,
11 there are some portions of the exhibit which we should
12 like to call to the attention of the Tribunal concern-
13 ing conclusions which, according to the Consul General,
14 DOHIHARA had in mind. One of them concerned the
15 Emperor's apparent resolve to go to Manchuria at the
16 risk of his life.^a This is significant because it
17 indicates that nobody was about to kidnap Pu-Yi. Fur-
18 ther on in the telegram, the fact is recited that the
19 Consul General advised DOHIHARA that the army had better
20 give up its plan at least for the time being. The
21 Consul General then proceeds to state that DOHIHARA
22 did not accept his advice but expressed himself to the
23 effect that it should be clarified by sounding the
24 Emperor's mind, that if he (the Emperor had no intention
25

a. T. 4365

1 to run the risk, then he (DOHIHARA) would leave with a
2 parting remark that there would be no such opportunity
3 in the future for the Emperor, and would dispatch a
4 telegram to the military authorities at Mukden to the
5 effect that he would consider an alternative measure,
6 as the present plan was hopeless of success. This can
7 only mean one thing and that is that neither DOHIHARA
8 nor anyone else in the army had any idea of kidnapping
9 Pu-Yi; that the matter was in the hands of Pu-Yi himself.
10 This telegram bears out the overall testimony and is
11 not in the least inconsistent with the testimony of
12 Pu-Yi in regard to DOHIHARA.

13 The next telegram referred to is exhibit 290.
14 This telegram is supposed to refer to the conversation
15 DOHIHARA held with the staff of the Consulate. In read-
16 ing this telegram an entirely different light can be
17 placed upon its meaning than that advanced by the
18 prosecution. In their argument they state that DOHIHARA
19 pointed out to the staff of the Consulate that the state
20 of affairs in Manchuria was brought about solely by the
21 activities of the Chinese authorities and in case the
22 enthronement of the Emperor became indispensable in
23 order to save the situation, it would be outrageous for
24 the Japanese Government to take action to prevent it.
25

1 The telegram states that the Manchurian state of affairs
2 was brought to the present condition solely by the activ-
3 ities of the military authorities there and it does not
4 mention Chinese military authorities at all. It goes on
5 further to state that it would be outrageous for the
6 present government to take the attitude of preventing
7 it. Whether DOHIHARA was talking about Chinese troops
8 and the Japanese Government is not made clear. He does
9 point out that the situation was tense with the Kwantung
10 Army and we also find this statement contained in the
11 telegram: ". . . In Japan proper too besides the
12 assassination plotters who are now under confinement,
13 some graver accident may occur he feared."^a

14 This telegram again shows that DOHIHARA was
15 advising of the delicate situation and giving his
16 opinion as to what he feared might happen. In a previous
17 telegram of the series, as we have pointed out, he
18 already had stated that unless the Emperor voluntarily
19 came out and took the risk involved that he would advise
20 the Kwantung Army to the effect it was hopeless to
21 attempt to bring him out.

22 And again in this telegram, if it can be
23 believed at all, DOHIHARA predicated his actions on
24 the choice of Emperor Pu-Yi because we find these words:
25

a. T. 4367-8

1 "If the Emperor should decide to come out, he must be
2 brought out even if it depends on political expediency
3 as a means." Most of the rest of the telegram is merely
4 the opinion of the sender based obviously upon hearsay
5 and surmise.^a At the end of the telegram, the Consul
6 General tells the Foreign Office that with further
7 regard to the Emperor (Pu-Yi), he had repeatedly, through
8 Pu-Yi's attendants, given his advice to act with great
9 prudence and requested instructions from the Foreign
10 Office as to the degree to which he could speak to the
11 Emperor about the matter. This again shows that nobody
12 was about to kidnap Pu-Yi.

13 The next telegram concerns the alleged inter-
14 view which DOHIHARA had with Pu-Yi. This is exhibit
15 291.^b The information in this telegram is obtained from
16 two places, one from a secret conversation with an un-
17 identified person named Chiang Chui and another is from
18 the "Star," obviously a newspaper and consequently can
19 have very little, if any, probative value. However, it
20 is interesting to note that if DOHIHARA did talk to the
21 Emperor on this occasion, and we do not deny he did talk
22 with him on one occasion, the Emperor was in a very pleas-
23 ant frame of mind about the whole thing because the
24

25 a. T. 4368
b. T. 4373

1 telegram states in part, ". . . "Then former Emperor was
2 told restoration is welcomed by Japanese Imperial House-
3 hold, he seemed greatly willing, and expressed his desire
4 to know to what extent Japanese Government intends to
5 assist and also expressed his wishes to know details of
6 method of escape from here."^a This telegram, if it
7 proves anything, proves only that Pu-Yi was not the
8 subject of an abduction plot.

9 The next telegram is exhibit 292. Since the
10 Tribunal did not consider newspaper reports as evidence
11 in behalf of the accused except under certain special
12 conditions, we shall not discuss this telegram except
13 to state that it is a condensation of a news story report-
14 ed in the "I-shih-Pao," a Chinese newspaper.^b

15 The next telegram is exhibit 300, on which we
16 have already commented at great length, and the next
17 one is exhibit 294, a telegram in the same series giving
18 as the source for its information what the sender could
19 gather from the captain of a ship known as the "Awaji
20 Maru." Briefly, this deals with DOHIHARA's supposedly
21 guiding the former Emperor on his trip from Tientsin.
22 Since the prosecution themselves admit that DOHIHARA did
23 not accompany him on this trip^c it is hardly worth
24

25 a. T. 4374
 b. T. 4375
 c. Pros. Sum. P. DD-20

1 discussion. The whole telegram is based on hearsay and
2 there are several places in the telegram that disclose
3 the source of the information, such as the words, ". . .
4 is said to be engaged in plans," and "he is said to have
5 been." Obviously the sender was not certain of his infor-
6 mation.^a

7 The next telegram cited by the prosecution is
8 exhibit 297^b and concerns the Emperor Pu-Yi after he
9 left Tientsin and since it is admitted by the prosecution
10 that DOHIHARA had nothing to do with him at that time
11 there is no point in discussing it; and the next telegram,
12 exhibit 298^c is in the same category, and the same
13 applies to exhibit 302^d.

14 These are the only telegrams of any importance
15 dealing directly with the activities of DOHIHARA which
16 were cited by the prosecution. They do make reference
17 to telegrams concerning other people which have little,
18 if any, bearing on DOHIHARA, and therefore they do not
19 need any further consideration at this time.

20 The prosecution next proceed to what they term
21 DOHIHARA's undercover activities in the Tientsin area.^e
22 However, almost without exception they depend on the
23

- 24 a. T. 4379 - 4380
25 b. T. 4387-4388
c. T. 4390
d. T. 4400
e. Pros. Sum. P. BB-16.

1 series of telegram, most of which we have analyzed, and
2 others probably which they did not cite. Most of the
3 telegrams are nothing but newspaper reports and evidence
4 of similar character which throw little, if any, light
5 upon the alleged activities of DOHIHARA. The prosecu-
6 tion assume that all the incidents in Tientsin were
7 engineered by DOHIHARA, but their own testimony contra-
8 dicts any such theory, especially with the so-called
9 terrorists' acts towards Fu-Yi. There is reason to
10 believe that much of the trouble was instigated by the
11 headquarters of the Iron Blood Group, a Chinese
12 communist party. The prosecution introduced into
13 evidence a telegram,^a which will bear out this belief.
14 It states, in substance, that several letters of threat
15 had been received by Fu-Yi from the headquarters of the
16 Iron Blood Group - a branch of the Chinese Communist
17 Party - and other anonymous persons.^b It appears
18 significant that although the prosecution introduced
19 that telegram they did not refer to it in their argument.
20 We do not believe that further discussion on this phase
21 is warranted or would be of benefit to the Tribunal and
22 we pass on to the next subject.

23
24 The prosecution have a sub-title which they
25 designate as "DOHIHARA's Control of Opium Traffic."^c

a. Ex. 296, T. 4384

b. T. 4385

c. Prosec. Sum. p. BB-23

1 Without going into details, the Tribunal will recall
2 that the prosecution has laid stress on the fact that
3 others were in control of the opium traffic and conse-
4 quently the defense was rather surprised that, in
5 addition to all the other things which the prosecution
6 claims DOHIHARA was responsible for, they should also
7 include the opium traffic. However, the only period of
8 time that DOHIHARA could possibly have had anything to
9 do with the opium traffic was between the 18th of Sept-
10 ember 1931 and the 20th of October of the same year.
11 That was the period of time when he was Mayor of the
12 City of Mukden, and the only evidence contained in the
13 Record is that referred to by the prosecution^a having
14 to do with a telegram sent by Consul General HAYASHI to
15 Foreign Minister SHIDEHARA in which HAYASHI states that
16 according to reliable sources the municipal administr-
17 ation office planned the mobilization of opium. This
18 telegram was sent on October 13^b which was seven days
19 before DOHIRARA was relieved as the Mayor of Mukden on
20 the 20th of October.^c At the same time this telegram
21 was sent, or at least shortly thereafter, the prosec-
22 ution cite evidence which shows that DOHIHARA was not in
23 Mukden but that he was in Tientsin trying to abduct Pu-Yi^d

25 a. Pros. sum. p. BB-24
b. T. 37,340

c. Ex. 57, p. 88
d. Pros. sum. BB-9,
Tr. 15,726

1 and they also admit that he remained there until the
2 end of November.^a Consequently, DOHIHARA could have
3 had nothing to do with opium control. Even taking the
4 prosecution's viewpoint, which is entirely erroneous
5 and not consistent with the evidence, the best con-
6 clusion that could be drawn is that the control of
7 opium was in a planning period and there were actually
8 no operations at that time. To state that DOHIHARA
9 controlled the opium traffic is entirely unwarranted
10 by the evidence. Actually, the plans, if any there
11 were, were but the materialization of a part of the
12 plans of the army which plans were marked secret No.
13 781 as of October 2 of that year.^b At other places
14 in the summation, we have discussed at length the
15 "reliable sources" which consul generals were send-
16 ing to the Foreign Office. Actually such so-called
17 "reliable sources" were the most unreliable that could
18 be conceived of under the circumstances. The prosec-
19 ution's assertion that MINAMI's testimony that DOHIHARA
20 had nothing to do with the problems such as opium and
21 was only an attempt to whitewash DOHIHARA^c is uncalled
22 for and is not justified by the Record. Their reference
23 to the fact that MINAMI testified that one of the reasons
24

25 a. Pros. Sum. p. BB-20

b. T. 37,340

c. Pros. Sum. p. BB-24

1 for abolishing the Special Service Department might
2 have been because it was running the opium traffic for
3 its own personal benefit^a has absolutely no relation
4 to DOHIHARA. That incident occurred, as will be shown
5 by our further summation, more than two years later at
6 a time when DOHIHARA was not connected with Special
7 Services.

8 Since the prosecution, as we have already stated,
9 surprised the defense by attempting to accuse DOHIHARA
10 of having controlled the opium traffic, we have no choice
11 except to thoroughly analyze the testimony in addition
12 to answering the prosecution's argument. As we have
13 pointed out, and this date is not contested, DOHIHARA
14 first appears on the scene, insofar as this case is con-
15 cerned, as the Head of the Special Services Organization
16 in Mukden on or about August 15, 1931.^b During that
17 period of time opium control is out of the picture
18 although the testimony of the star witness for the
19 prosecution, one General TANAKA, would seem to indicate
20 that it was not. However, we shall not quote from his
21 testimony at this time because it is sufficient to state
22 that his recollection of dates and events is not infall-
23 ible and that he did make mistakes. We shall later

25 a. Pros. Sum. p. BB-24
 b. Ex. 57, p. 88

1 summarize those portions of his testimony which we feel
2 may be relevant to the issues. Because of TANAKA's
3 testimony, the dates that DOHIHARA held various positions
4 becomes of great significance with reference to the opium
5 question. Some of these dates are not contested by the
6 prosecution. However, we consider it necessary to bring
7 all the dates in question to the attention of the
8 Tribunal in order that a full and clear mental picture
9 of the entire situation may be formed.

10 The prosecution introduced a small part of the
11 interrogation which they took from DOHIHARA at the time
12 they were preparing their case, and have attempted to
13 show inconsistencies in it, apparently because at the
14 outset he did state that the first time he went to
15 Manchuria was August 15, 1931.^a This particular portion
16 of the interrogation was taken on 11 January 1946 and
17 at a later time, in February 1946, additional interroga-
18 tions were taken, at which time DOHIHARA was reminded
19 that he had said that the first time he went to Manchuria
20 was on August 15, 1931.^b DOHIHARA admitted frankly
21 that he had said so but stated that actually he was
22 mistaken as to the date, the actual date being August 18,
23 1931. He also stated that he had been in Manchuria once
24 in 1911 and once in 1929.^c Why the prosecution settled

a. T.15,713.

b. T.15,721.

c. T.15,721

1 on such understandable inconsistencies when those
2 inconsistencies could have no possible bearing upon the
3 guilt or innocence of the accused is quite beyond the
4 comprehension of defense counsel. However, it does
5 demonstrate the extreme lengths the prosecution has
6 been forced to in an attempt to prove their case.

7 Common sense dictates that the only date we are actually
8 concerned with is when did DOHIHARA go to Manchuria in
9 1931. As to whether it was the 15th or the 18th of
10 September is of slight consequence, but in the event
11 importance be attached to that a perusal of the Record
12 containing DOHIHARA's interrogations^a will show that
13 the error, later corrected, was a natural one. The
14 order appointing DOHIHARA as the head of the organiza-
15 tion was August 15 but he did not actually arrive there
16 until August 18, hence the discrepancy. According to
17 the testimony of TANAKA,^b DOHIHARA was placed in charge
18 of the Special Services Organization and remained the
19 head of that organization down to the time when the
20 control of opium was transferred. This statement is
21 absurd on its face and we know it is not true because
22 even the prosecution do not contest the fact that
23 DOHIHARA was relieved of the job when he took over as
24

25 a. M. Mon. 20 Jan. '47; Tues. 21 Jan. '47
b. T. 15,857

1 Mayor of Mukden. There is no contest on the fact that
2 DOHIHARA had been in Tokyo and was on his return to
3 Mukden at the time the Mukden Incident occurred and
4 upon his arrival was immediately made the Mayor of that
5 city. This occurred immediately after September 18,
6 1931.^a DOHIHARA did not again head the Special Services
7 Organization in Mukden until July 1934. However, by
8 that time the control of opium had been removed from
9 the Special Services Organization and was under a
10 specially created board. We shall now proceed to the
11 discussion of the setting up of that board and to a
12 further analyzation of the evidence which will prove
13 conclusively that General DOHIHARA never had anything
14 to do with opium control.
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a. T. 15,714, Ex. 57, p. 88

1 We have already made reference to the testi-
2 mony of the witness TANAKA concerning DOHIHARA's con-
3 nection with opium, but it is necessary to further
4 analyze his testimony in connection with other and
5 better informed witnesses. As the Tribunal will re-
6 call, the witness TANAKA testified on so many sub-
7 jects that he might well be termed a self-styled
8 walking encyclopedia on contemporary Japanese history.
9 This remark is made in order to recall to the court's
10 attention the literally hundreds of instances he tes-
11 tified to from memory alone. With reference to DOHI-
12 HARA, he stated, in substance, that DOHIHARA was the
13 head of the Special Services Organization in Mukden
14 when the Manchurian Incident broke out but that for a
15 short time, someone he did not remember occupied the
16 position, and then again DOHIHARA became the head of
17 that organization and continued right down to the time
18 when the control of the opium traffic was transferred.^a
19 This statement was made on direct examination at which
20 time he also stated that General DOHIHARA was the head
21 of the Special Services Organization in Southern
22 Manchuria. Reference is made to this last statement
23 of the witness TANAKA because of the fact that it had
24 been made to appear that the Special Services Organ-
25 a. T. 15,857

1 ization in Mukden was a wide-flung organization with
2 a great deal of power over large sections of Manchuria.
3 This we know was not true. On cross-examination we
4 elicited from the witness the fact that he was in
5 error. We first reminded the witness of his testi-
6 mony, given the previous day, concerning the fact he
7 had stated that DOHIHARA was the head of the Special
8 Services Organization in Manchuria at the time of the
9 outbreak of the Manchurian Incident and asked him if
10 he desired to change his statement. Upon objection
11 from the prosecution that we were misquoting the
12 Record, we then read the Record word for word. There
13 could be no possibility of a misunderstanding upon the
14 part of the witness. And when we again asked him if he
15 desired to change his answer, the witness replied, "I
16 am ready to change it."^a The witness then went ahead
17 to explain that inasmuch as the Chiefs of the Military
18 Services Departments were in charge of small local areas
19 he had said that the accused DOHIHARA was in charge of
20 the Special Services Department in Southern Manchuria
21 or Mukden.

22 The prosecution apparently relied upon the
23 witness TANAKA to tie DOHIHARA into the opium question
24 by the testimony just referred to. However, by the

25 a. T. 15,921

1 witness' own testimony the position which DOHIHARA
2 held, if he held it, even at the time the witness said
3 he did, would preclude him from being in control of
4 opium in Manchuria. At best his jurisdiction was,
5 according to the witness, a small local area. To be
6 perfectly fair with TANAKA, he stated, in substance,
7 that if his recollection was not mistaken, General
8 DOHIHARA was the Chief of the Special Services De-
9 partment at the time of the outbreak of the Manchurian
10 Incident and after that he once returned to Japan and
11 then went back to Manchuria in December; as near as
12 the witness could recall -- December 1934 -- as Chief
13 of the Special Services Department. He further stated
14 that if there was any mistake in his memory he should
15 be glad to change it.^a

16 Further questioning of the witness elicited
17 the fact that he thought that the Opium Control Board
18 was put into effect on January 11, 1933 but that the
19 actual completion of the Opium Control Board took
20 place in April 1935. It is patent the witness was
21 relying on his memory entirely and could equally be
22 mistaken, which fact he admits. He once stated: "I
23 think I am right."^b

24
25 a. T. 15,923
b. T. 15,927

1 THE PRESIDENT: We will adjourn until nine-
2 thirty tomorrow morning.

3 (Whereupon, at 1600, an adjourn-
4 ment was taken until Tuesday, 16 March,
5 1948, at 0930.)

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16 MARCH 1948

I N D E X

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Tuesday, 16 March 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are
5 represented by counsel. The Sugamo Prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 Colonel Warren.

10 MR. WARREN: Until the time of the establish-
11 ment of the Opium Control Board, the control of opium,
12 such as it was, may have been handled by various
13 special service organizations of which there apparently
14 were many. TANAKA, in his direct examination
15 a. (T. 15857-15858) stated the names of the ones who made
16 an effort to take away the control of the opium traffic
17 from the various special service organizations and to
18 establish the Opium Control Bureau. None of those
19 named was the accused DOHIHARA. There was absolutely
20 no attempt upon the part of the prosecution to connect
21 DOHIHARA with any such movement. He had nothing to
22 do with it. TANAKA's testimony boils down in substance
23 to the fact that DOHIHARA was the head of the Special
24 Services Organization in Mukden; that there were several
25 a. 15857-15858.

1 special services organizations; and that these or-
2 ganizations were in the control of the opium trade
3 until such time as the Opium Control Board was formed;
4 that the Opium Control Board was put into effect on or
5 about January 11, 1933 but that in his recollection
6 the Opium Control Board up to that time was an organiza-
7 tion in name and not in fact; and that DOHIHARA returned
8 as head of the Mukden Special Services Organization
9 in December 1934.

10 • Regardless of the fact that his testimony
11 is hazy in some respects it is clear on two points.
12 When the Opium Control Board was set up, opium control
13 was removed from the special services organizations and,
14 according to his recollection, DOHIHARA did not return
15 as head of the Mukden Special Services Organization
16 until December 1934, almost a year after the Opium
17 Control Board was put into effect. Actually, opium
18 control was under what was known as the Monopoly
19 Bureau. In order that there can be no confusion on
20 this point as to names, we should again like to refer
21 to the testimony of the witness TANAKA where he out-
22 lines the duties of the Monopoly Bureau and refers to
23 it, as such, in the following terms, "This Monopoly
24 Bureau . . ." ^{a.} (T. 15958).

25 e. T. 15958.

1 We now desire to focus the Tribunal's atten-
2 tion on the testimony of witnesses whose memory, upon
3 the points referred to in the testimony of the witness
4 TANAKA, should be, and is certainly more reliable.
5 The first witness we will refer to is the witness
6 NAMBA, Tsunekazu. This witness was the first Japanese
7 to assume the position of Vice-Director of the Monopoly
8 Bureau, the Director of the Bureau being a Chinese by
9 name of Chiang-en-chin,^{a.} (T. 20309-10). According to
10 this witness, he assumed his duties on January 11,
11 1933. He refers to the proclamation prohibiting the
12 smoking of opium and states that the organization of
13 the Monopoly Bureau and the opium law and the regula-
14 tions governing the enforcement of them was promul-
15 gated in November 1932^{b.} (T. 20310). He further states
16 that in the beginning, the Monopoly Bureau was intended
17 as a general monopoly to handle other products besides
18 opium but that only opium was handled for the first few
19 years^{c.} (T. 20311). He then goes into a more or less
20 detailed dissertation concerning the Bureau and the
21 opium situation which we are not concerned with at
22 this time. However, the testimony of the witness
23 NAMBA, as just discussed, is important for the reason it
24

25 a. T. 20309-10.

b. T. 20310.

c. T. 20311.

1 does not in any manner conflict with that of the
2 prosecution and only makes more clear the fact that
3 opium control for Manchuria was under the Monopoly
4 Bureau from January 1933. Even from the testimony of
5 TANAKA it is clear that DOHIHARA could have had nothing
6 to do with the opium control question because he states,
7 to the best of his recollection, that DOHIHARA returned
8 as the head of the Special Services Organization of
9 Mukden in December 1934. However, his memory on that
10 point is not far off because actually DOHIHARA returned
11 as head of that organization some time in July 1934.
12 According to the interrogation of the accused himself,
13 he did, some time during the latter part of the month
14 of November 1931, go to Harbin as the head of the
15 Special Services Organization where he remained until
16 March 1932; on the 1st of April 1932 he became Com-
17 mander of the Ninth Brigade at Hiroshima where he
18 remained until July 1934 at which time he returned to
19 Mukden as head of the Special Services Organization.

20 a. (T. 15715). It is believed that the recollection of
21 the accused DOHIHARA on this point would be more
22 accurate than the recollection of any other person.
23 However, regardless of which date the Tribunal accepts,
24 and incidentally, in order to be perfectly fair, there
25 a. T. 15715.

is a third date when he is supposed to have returned,
1 that was December 1933 and came from a defense witness,
2 any date mentioned would have been at a time after
3 opium control had been taken over by the Monopoly
4 Bureau. The third date just mentioned, December 1933,
5 is taken from the testimony of the defense witness,
6 AIZAWA, Makoto, (T. 28603). He states among other
7 things that from April 1933 until March 1936, he was
8 employed as a civilian by the army and was attached
9 to the Mukden Army Special Services Organization; that
10 during his tenure, specifically from December 1933
11 until March 1936, he served under the accused DOHIHARA.
12 In his testimony he gives the Tribunal an idea of the
13 size of the Mukden Special Services Organization because
14 he states that in addition to DOHIHARA and DOHIHARA's
15 assistant, there were four clerks kept busy, for the
16 most part, decoding telegrams which contained matters
17 for press releases. Concerning the question of opium,
18 he states, ". . . I can definitely state that at no
19 time while I was connected with the organization, did
20 it ever have anything at any time to do with opium.
21 Of this I am positive." ^{b.} (T. 28606). The statement
22 of this fact is clear and concise and is not in any
23
24

25 a. T. 28603.

b. T. 28606.

1 manner inconsistent with the testimony of the prosecu-
2 tion, unsatisfactory as that testimony may be.

3 There were other times in Manchuria when the
4 accused DOHIHARA was there on business but the analyza-
5 tion of the testimony with reference to these periods
6 of time in connection with the opium question would be
7 useless and could be of no assistance to the Tribunal.
8 The fact remains that any fair consideration of the
9 testimony can lead only to the ultimate conclusion
10 that DOHIHARA had nothing whatsoever to do with the
11 opium traffic. There can be no doubt on that score.

12 The prosecution gave some time to what they
13 deem DOHIHARA's activities in North Manchuria and
14 appear to attach great importance to the fact that he
15 was sent to Harbin on 26 January 1932 to take over
16 the office of the Special Services Organization there.
17 They do not say why they attach any importance to it
18 and merely cite the Lytton Report leaving us to draw
19 own conclusions. ^{a.} (Ex. 57, P. 79). The Lytton
20 Report makes it plain that the fighting around Harbin
21 was between two Chinese forces and that there was
22 considerable anxiety for the 4000 Japanese residents
23 and 1600 Koreans who were exposed to the danger of
24 massacre, and that DOHIHARA was sent there in this
25 a, Ex. 57, P. 79.

1 emergency. Fighting between the Chinese forces in
2 the irrediate neighborhood would have resulted in
3 the retreat to the town of a defeated army, the
4 horrors of which the recent history of China provides
5 so many examples. ^{a.} (T. 57, P. 79, par. 1). So
6 actually, there is a far different picture from that
7 which the prosecution apparently wish to have the
8 Tribunal believe. We earnestly request the Members
9 of the Tribunal to read both the citations of the
10 prosecution and the defense so that there can be no
11 question of the soundness of the position of defense
12 on this matter.

13 The prosecution state as a fact that, as a
14 result of negotiations with DOHIHARA, General MA
15 accepted the position of Minister of War in the
16 puppet government and cite as their authority the
17 testimony of the prosecution witness Powell. Powell's
18 testimony is rank hearsay, based upon newspaper
19 stories, and had his testimony come at a later time in
20 the trial of this case, we feel, in view of subse-
21 quent rulings of the Tribunal, he would not have
22 been permitted to testify in the manner he did. As
23 it was the defense objected to his testimony. However,
24 the President stated that the Tribunal had to take
25 a. Ex. 57, P. 79, par. 1.

1 hearsay, but would take into account that its source
2 was newspapers. ^{a.} (T. 3232). Powell admits that he did
3 not interview DOHIHARA ^{b.} (T. 3323-4). He states
4 frankly that his authority for the statement that
5 General MA was bribed with a million dollars in gold
6 bars was a circular telegram allegedly sent by General
7 MA to all newspapers. ^{c.} (T. 3233). Although Powell
8 states, in substance, that as a result of negotiations
9 with DOHIHARA, MA accepted the position of Minister of
10 War in the Chang-chun government. ^{d.} (T. 3232). He
11 had no personal knowledge but he quoted from memory
12 from the telegram. Later, in commenting upon the con-
13 tents he stated that MA, of course, asserted he was a
14 loyal Chinese citizen and that as a matter of fact MA
15 still is with the National Government and is somewhere
16 in the vicinity of Paotou. ^{e.} (T. 3232-4-5). Since all
17 of Powell's testimony is of the type the defense was
18 not permitted to use and since the prosecution have
19 no other type of evidence on the subject and since no
20 reliability can be placed upon this type of evidence,
21 we see no point in arguing the question further.
22

- 23 a. T. 3232.
24 b. T. 3343-4.
25 c. T. 3233.
d. T. 3232.
e. T. 3232-4-5.

We admit the prosecution assertion that
1 General DOHIHARA was promoted to major general on
2 April 11, 1932, but we deny that it had anything to do
3 with the establishment of the puppet state of Manchuria
4 and challenge the prosecution in their answer to this
5 summation to cite their authority.
6

7 THE PRESIDENT: Colonel Warren, I do not like
8 interrupting; I prefer to allow you to make statements
9 which are not in accordance with the facts as we
10 know them. I do not say you make them deliberately.
11 You are saying, in effect, that we wrongly excluded
12 evidence that the defense offered. That is the sum
13 total of what you are saying. You should refrain from
14 making such statements. However, we will allow them
15 to stand, but we will disregard them, of course.
16

17 MR. WARREN: Your Honor, I never in my life
18 in the summation of a case have ever said anything
19 that I did not feel was justified by the record. I
20 am subject to error; but in this instance I must remind
21 the Tribunal that the Tribunal refused to permit us
22 to bring in newspaper stories, and Powell's testimony
23 was based entirely on newspaper stories; at least,
24 the portions to which we refer with reference to
25 DOHIHARA. If the Tribunal refuses to take into con-
sideration the source of his testimony, then I feel

1 that the Tribunal has done an injustice to the defense
2 because we were not permitted to bring in newspaper
3 stories to counteract his testimony.

4 THE PRESIDENT: You are criticizing decisions
5 of the Court on evidence, and you are doing so in the
6 course of your summation. That would not be allowed
7 in any American court or in any British court, and
8 should not be allowed here. In a summation you state
9 the law as you see it, or you make submissions, and
10 you deal with the evidence admitted. You do not
11 criticize the court for its decisions.

12 MR. WARREN: Your Honor chooses to place me
13 in a position which I have not assumed, and I must
14 explain myself.

15 I have previously explained in my summation
16 that there came a time when the Tribunal realized
17 that to accept these things they must continue on
18 for years. I did not criticize the Tribunal; as a
19 matter of fact, I saw nothing else for the Tribunal
20 to do at the time. That is not criticism.

21 THE PRESIDENT: You say the Tribunal admitted
22 a certain type of evidence when it was tendered by
23 the prosecution, but rejected it when it was tendered
24 by the defense. That is criticism.

25 MR. WARREN: Your Honor, if I have criticized

the Tribunal, of course I apologize to the Tribunal.

1 But I wish to point out that your statement just now
2 that certain evidence was introduced on the part of the
3 prosecution that was not permitted on the part of the
4 defense is a true statement, and that is not criticism.
5

6 THE PRESIDENT: In your opinion it is a
7 true statement, of course.

8 We do not want to deny your right to an
9 opinion. But we do not want to be told what your
10 opinion is here now, in the course of the summation,
11 Colonel Warren.

12 MR. WARREN: Your Honor, I would not know how
13 to make a summation without expressing an opinion from
14 time to time. I will assure you that there is not
15 one word in this that would ever be rejected by any
16 court in which I have appeared. I do not know about
17 your British courts. But certainly I would challenge
18 the ruling of a court in a summation at any time in
19 the United States.
20

21 THE PRESIDENT: Proceed to read.

22 MR. WARREN: I would like to say this, your
23 Honor, in explanation. I merely wish to make my
24 position plain to the Tribunal. If I have inadvertently
25 said something that would cause a man used to another
system of practice than mine to be apprehensive of my

1 attitude, certainly I do not intend to insult the
2 Tribunal and anything I may have said to that effect
3 is inadvertent; and I wish every Member of the Tribunal
4 to know that.

5 The prosecution next proceed in their sum-
6 mation to what they term DOHIHARA's endeavor in setting
7 up Inner Mongolia Autonomy. ^a (Pros. sum. P.P. BB-25.)
8 They make the assertion that early in 1935 MINAMI
9 deemed it proper to enlarge the scope of the Tangku
10 Truce and sent DOHIHARA to negotiate with the Chinese
11 authorities in the Chahar Province. We do not deny
12 that DOHIHARA, who was then on the staff of the Kwantung
13 Army, did carry on some negotiations. However, these
14 negotiations had nothing to do with increasing the
15 scope of the Tangku Truce but came about as a result
16 of a series of border incidents. ^b (Tr. 20,754) The
17 reason General DOHIHARA was sent was because those
18 troubles had arisen within the area where he was
19 stationed and he was well versed in the actual facts.
20 Also, his character was best suited for negotiating
21 with the Chinese on such sundry affairs towards
22 settling them in a friendly, peaceful way. ^c (T. 20,755)

23 Although the prosecution stated that the result of
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- 25 a. Pros. Sum. P.P. BB-25.
b. Tr. 20,754.
c. T. 20,755.

the negotiations led to the so-called "Ching-DOHIHARA

1 Agreement," there actually was never any such agree-
2 ment in existence; that is, if we can believe the
3 prosecution witness General Ching, who is supposed to
4 have made the agreement. He states that there was no
5 so-called "Ching-DOHIHARA Agreement" in existence,^a
6 (Tr. 2336) and then proceeds to verify the defense's
7 position that DOHIHARA was there to settle pending
8 border disputes on a temporary basis. With reference
9 to this he states that with regard to the North Hopei
10 Affair he, Ching, on the order of the Central Govern-
11 ment discussed the matter with DOHIHARA with a view
12 to a temporary settlement.^b (Tr. 2337) At this point,
13 in reading the record, one might be confused and believe
14 that there are two Chings; however, a careful study
15 of the entire testimony would disclose that this is
16 probably a result of interpretation. Ching, continuing
17 to testify concerning the same agreement, later made
18 the assertion that the question was temporarily
19 settled.^c (Tr. 2339)

21 Not only was it temporarily settled but it
22 was settled in a very friendly manner.^d (Tr. 20,756)

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24 a. (Tr. 2336).
25 b. (Tr. 2337).
c. (Tr. 2339).
d. (Tr. 20,756).

1 The whole episode had nothing to do with establishing
2 or attempting to establish autonomy in Inner Mongolia.

3 The prosecution then continue in their argu-
4 ment to state that DOHIHARA made a trip to see the
5 Governor of Chahar and that his mission was to promote
6 Inner Mongolian self-government.^a (Pros. Sum. P. B3-21)
7 The citation which they give^b (Ex. 197, Tr. 2283) indi-
8 cates that such might have occurred, but in reading
9 the exhibit it becomes plain that WAKASUGI who for-
10 wardcd the information to the then Foreign Minister
11 HIROTA was only guessing. He starts his communication
12 out with the admonition that his observations of the
13 recent situation in the area lead him to believe cer-
14 tain things and then proceeds to recount his beliefs
15 as facts. Neither the sender nor the receiver of the
16 cable in question ever considered the communication
17 to contain facts as can be observed by reading the
18 exhibit. It is true that the cable does say that
19 DOHIHARA made such a trip, but the sender of the cable
20 does not presume to state why the trip was made except
21 to forward his own opinion which he, in substance, says
22 was no doubt to promote the Inner Mongolian self-
23 government. If DOHIHARA is to be found guilty of
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25 a. Pros. Sum. P. BB-21.

b. Ex. 197, T. 2283.

1 having made a trip for the purpose advanced by the
2 prosecution such finding will have to be made on guess-
3 work.

4 The prosecution next discuss an alleged agree-
5 ment which they claim was made between DOHIHARA and
6 the Hopei-Chahar Regime, in which it was agreed that
7 Chahar would be placed under the domination of one
8 Prince Teh. In order to substantiate this statement,
9 the direct testimony of the prosecution witness TANAKA
10 is cited.^a (Tr. 2041) However, in reading his testi-
11 mony, we find that the agreement was supposed to have
12 been reached between DOHIHARA and General Chin Teh-chun.
13 We assume that the testimony of General Ching on this
14 matter would have been much more valuable than that of
15 TANAKA, yet the prosecution did not ask General Ching
16 about this matter. We wonder if that could be because
17 Ching himself denied he had any agreement with DOHIHARA?
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a. Tr. 2041.

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We have indicated that DOHIFARA, while well versed in the knowledge of the Chinese people and therefore useful to his superior officers, was not considered by them as competent to handle major problems such as those which the prosecution rely upon to establish conspiracy. No better proof of this statement can be had than the information elicited by the prosecution from the accused MINAMI in their cross-examination. The prosecution asked MINAMI if he sent DOHIFARA to North China to establish the Hepei-Chahar Regime and MINAMI answered that he did not give DOHIFARA such a difficult mission.^{a.} MINAMI apparently did not consider DOHIFARA capable of carrying out any plan of such magnitude otherwise he should never have had any occasion to make the remark, MINAMI's testimony also bears out other evidence as well as the defense contention that DOHIFARA was used only because of his knowledge of China and because of his mild character. He was sent to Peking only for the purpose of talking with General Sung Che-yuan to see whether or not some means to peaceful relations between China and Japan could be found.^{b.} Actually this is the only thing that DOHIFARA had to do with the affairs in North China. We honestly believe that when thorough consideration has been given to all the citations of the

(a. T. 19144.
b. T. 19995.)

1 prosecution that the Tribunal will arrive at the con-
2 clusion that all the other activities ascribed to
3 DOHIHARA is just so much wool gathering. As for instance
4 their reference to the East Hopei Regime which certainly
5 should never be brought into the picture by the prose-
6 cution. The Japanese had nothing to do with the estab-
7 lishment of such regime,^{a.} and the Tribunal could almost
8 take judicial knowledge of that fact. That regime was
9 set up by the Chinese themselves and, although the
10 prosecution's summation could be misconstrued by us, we
11 do not believe that they intended to convey the impres-
12 sion that the East Hopei Regime was instigated by the
13 Japanese.

14 The prosecution next discuss what they consider
15 to be DOHIHARA's role in the conspiracy to estrange
16 North China. They allege that DOHIHARA and his co-
17 conspirators attempted to bring North China under Japa-
18 nese domination.^{b.} They assume the conspiracy but cite
19 no evidence to prove it and instead cite exhibit 210
20 which was introduced over the strenuous objections of,
21 defense counsel.^{c.} The origin of this document is still
22 in doubt but as to what the document actually is there is
23 no doubt. It is a part of a summary of Japanese war

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25 (a. T. 19996.
b. Prosecution summation par. BB-28.
c. T. 2694-2700.)

1 crimes in China from 18 September 1931 to August 13,
2 1937, and is a Chinese document. The information con-
3 tained in it is not authenticated and could not possibly
4 have any more probative value than the Indictment.

5 Now, your Honor, in view of your previous
6 remarks, these next sentences might be construed as
7 criticism, and so I should like to delete them.

8 THE PRESIDENT: That is all right.

9 MR. WARREN: You think that is all right, sir?

10 THE PRESIDENT: You are dealing with probative
11 value.

12 MR. WARREN: All right. I will continue, sir.

13 We are still at a loss as to why it was ever
14 accepted in evidence, but it was, and we ask the Tri-
15 bunal to call to mind the words of the President when he
16 stated that "the representations of the defense would
17 always be kept in mind when we are considering such
18 document or evidence."^{a.}

19 THE PRESIDENT: We have, at times, to admit
20 documents for whatever probative value they may have.

21 MR. WARREN: Yes, sir.

22 The prosecution, by using this document,
23 attempted to prove that the purpose of creating an
24 autonomous regime in North China was to separate the
25 (a. T. 2700.)

1 five northern provinces from the Nanking Government, and
2 then go on to say that in September, 1935, in further-
3 ance of such a plan DOHIHARA went to Peiping to exert
4 his efforts in such behalf.^{b.} However, they do not cite
5 the portion of TANAKA's testimony stating that the name
6 of one of these regimes was the Eastern Hapei Anti-
7 Communist Regime. That name alone indicates the real
8 reason why action was needed. The significance of the
9 name has but become increasingly important as the years
10 roll by. The prosecution concede, however, that little
11 headway, if any, was made and state that DOHIHARA then
12 turned to threats and cited as their authority the
13 testimony of General Ching. We will not discuss his
14 testimony on this point other than to say that it is not
15 in any manner corroborated by any other evidence in the
16 record. We do call to mind however that this General
17 Ching is the same person who testified that the insti-
18 gator in the very beginning of the Japanese aggression
19 in North China was DOHIHARA.^{c.} This statement was made
20 without any supporting evidence whatsoever and on cross-
21 examination repeated efforts were made by counsel to
22 have General Ching name one single fact to bolster his
23 charges. This he could not do.^{d.} Finally, in utter
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25 (b. Prosecution summation par. BB-28.

c. T. 2436.

d. T. 2436-7-8.)

despair, he stated that a mutual friend of his and
1 DOHIHARA's had told him five days before the Mukden
2 Incident occurred that DOHIHARA was going to Manchuria
3 to embark on some big project.^{a.} This conversation was
4 supposed to have taken place in Chungshan Park in Peiping
5 and he finally stated that SHIBAYAMA was the mutual
6 friend who told him the story. Of course, the defense^{is}
7 immediately set out to ascertain who this SHIBAYAMA
8 person was and we did learn who he was and found, much
9 to our surprise, that he lived in Tokyo and had already
10 been called in by General Ching before we had an oppor-
11 tunity to talk with him. General Ching had told him
12 that his name had been used before the Tribunal and in
13 what connection it had been used. SHIBAYAMA was sur-
14 prised at the carelessness displayed by General Ching in
15 using his name because he, SHIBAYAMA, knew that he was
16 the only SHIBAYAMA who was a mutual friend of both
17 General Ching and General DOHIHARA.^{b.} It would have been
18 impossible for SHIBAYAMA to have had the conversation
19 with General Ching at the time Ching said he did because
20 he (SHIBAYAMA) was in Tokyo. Furthermore, at no time did
21 he ever mention anything about the Mukden Incident to
22 General Ching much less mention General DOHIHARA's name.^{c.}

- 24 (a. T. 2438.
25 b. T. 28632.
c. T. 28632.)

1 We assume that if General Ching is so careless in one
2 instance, he certainly would be in another. We cannot
3 give any credence to his testimony and in view of the
4 impeachment we feel we have a perfect right to ask the
5 Tribunal to scrutinize his testimony with extreme care.
6 If SHIBAYAMA had not been telling the truth, it would
7 have been a simple matter for the prosecution to have
8 denied the visit which General Ching arranged with
9 SHIBAYAMA or to otherwise have proven that SHIBAYAMA was
10 not telling the truth. We should have welcomed any such
11 attempt.

12 It is asserted that DOHIHARA announced that if
13 autonomy for North China was not proclaimed, he was pre-
14 pared to send five Japanese divisions into Hopei and six
15 into Shantung and that he fixed an ultimatum to expire
16 at noon the following day which was November 20^a. No
17 citation of authority for this statement is given except
18 a newspaper clipping which, so far as we can ascertain,
19 was never even read into the record. Be that as it may,
20 the prosecution state that the defense witness KUWASHIMA,
21 when presented with Japanese Embassy press telegrams from
22 England and China and from abroad, had to admit that their
23 reports about DOHIHARA's demands and intimidations con-
24 cerning North China autonomy were seen by his bureau and
25 (a. Prosecution summation, par. BB-30.)

1 reported to the Foreign Minister or Vice-Minister.^{a.}

2 Nothing could be further from the truth. We earnestly
3 ask the Tribunal to read the record because at the point
4 cited by the prosecution,^{b.} the question posed to the
5 witness was in substance: "Did not his bureau make and
6 file a large collection of these newspaper reports, both
7 American and British, about what was happening in North
8 China," and the witness answered in substance that he
9 has no recollection of any bureau having made any file
10 of newspaper reports. He does say, however, that he
11 remembers that they did receive many press telegrams from
12 their representatives in Europe and America. So far
13 from the truth is the conclusion of the prosecution on
14 this subject that we will not discuss it further but will
15 renew our request for the Tribunal to read the record.^{c.}

16 Also we will not discuss further the argument of the
17 prosecution with reference to DOHIHARA's activities in
18 North China and North Manchuria. We do earnestly and
19 sincerely request the Tribunal to read every citation
20 made by the prosecution because we believe that therein
21 lies our best defense. We cannot believe that the Tri-
22 bunal could ever draw conclusions so nebulous as the
23 prosecution seems to have reached.
24

25 (a. Prosecution summation, pars. BB-30, 31.

b. T. 29540.

c. T. 29539-40-41.)

1 THE PRESIDENT: If it is any comfort to you,
2 Colonel Warren, the Tribunal is checking every statement
3 of fact made in the summations on both sides.

4 MR. WARREN: I thought that, your Honor, and
5 my argument here is just to point out to the Tribunal
6 how strongly we feel that the Tribunal will reach that
7 conclusion, having read that.

8 With reference to the portion of the prosecu-
9 tion's argument which they designate as DOHIHARA's
10 activities after the Marco Polo Bridge Incident, ^{a.} there
11 are only two portions which need any answer. For the
12 most part, the prosecution argument merely outlines his
13 career by showing the official positions which he held
14 most of which we do not deny. The main thing we will
15 discuss at this time is the Five Ministers Conference
16 when DOHIHARA was named a member of a special commission
17 on Chinese affairs. In the first place, DOHIHARA was
18 not a member of the Five Ministers Conference, and his
19 selection was undoubtedly made because of his broad
20 knowledge of the Chinese people. The prosecution connect
21 this commission with the so-called Wu project. ^{b.} This
22 assumption is wrong. The commission was set up for
23 working out important stratagems which were to be under-
24 stood as political and economical strategies and not
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(a. Prosecution summation par. BB-33.
b. Prosecution summation par. BB-34.)

1 directly connected with military operation. ^{a.} The prose-
2 cution do not assert that anything more was done than
3 the mere naming of DOHIHARA to this committee. There is
4 no evidence to show that anything further was done or
5 that his services were subsequently used in the project.
6 In the absence of any evidence to the contrary, we can
7 assume this to be true, especially in view of the other
8 circumstances surrounding the transaction which the over-
9 all testimony would appear to indicate. This assumption
10 is based upon many passages in the evidence and not any
11 one particular passage, therefore we must ask the Tri-
12 bunal to draw on its own memory rather than attempt to
13 cite the record. Apparently the prosecution's main ob-
14 jective in referring to the Five Ministers Conference
15 and the naming of DOHIHARA to the committee was to use
16 that fact as a vehicle to connect it with the so-called
17 Wu project. The prosecution seemed to assume the fact
18 that because DOHIHARA was mentioned by the Five Ministers
19 Conference he immediately embarked upon what they term
20 his favorite sport of looking for a puppet leader. ^{b.} If
21 the prosecution had in mind as such puppet leaders Tang
22 Shoa-Ye and Wu Pei-fu, as is indicated, ^{c.} they are
23 certainly mistaken because these two men were the
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25 (a. T. 37362.

b. Prosecution summation par. BB-34.

c. Prosecution summation par. BB-24.)

original founders of the Kuomintang Party which is the
1 Central Government of China.^{a.} This mission, that is
2 the Wu Project, was a project set up for the purpose of
3 settling the war if possible. We take this statement
4 from the interrogatory of General DOHIHARA which the
5 prosecution introduced, and since the prosecution have
6 relied upon his statement as statements of fact, we see
7 no reason why the Tribunal cannot accept them from us.
8 Consequently, we shall not cite any further proof on
9 this fact.^{b.} These plans for bringing about the settle-
10 ment of war, as the prosecution admits, were terminated
11 as the result of the assassination of Tang Shao-Ye.^{c.}
12 The prosecution's statement to the effect that reports
13 to the Foreign and War Ministries on negotiations with
14 Wang Ching-wei and other puppet Chinese leaders were all
15 sent in the name of the DOHIHARA Kikan Agency at Shang-
16 hai, if not thoroughly analyzed is highly misleading.^{d.}
17 In the first place, General DOHIHARA never had any con-
18 nection whatsoever with Wang Ching-wei and we defy the
19 prosecution to cite the record to prove the contrary;
20 and with reference to the DOHIHARA Kikan Agency at
21 Shanghai, the name was merely a holdover, DOHIHARA hav-
22 ing nothing to do with it after May 19, 1939 -- that.

- 25 (a. T. 15716.
b. T. 15715-16.
c. Prosecution summation par. BB-34.
d. Prosecution summation par. BB-34.)

date did not appear on my errata sheet, sir -- and
1 according to the prosecution's version the agency was
2 established sometime in the spring of 1939.^{a.} The
3 prosecution do cite the testimony of YAMAWAKI^{c.} in an
4 attempt to show that DOHIHARA contacted Mr. Wang Ching-
5 wei, but the witness stated that he did not have any
6 recollection as to whether DOHIHARA contacted Wang Ching-
7 wei or any person purported to be his representative.
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The prosecution must have known that any communication
1 using the name of the DOHIHARA Kikan Agency after
2 May 19, 1939 had no connection with General DOHIHARA,
3 because on that date he was appointed Commander of
4 the 5th Army.* They know that the DOHIHARA Agency
5 and the person DOHIHARA was not one and the same because
6 they indicate that by their questioning of the witness
7 YAMAWAKI.^{a.} Why their argument is couched in terms
8 which would lead one to believe differently is quite
9 beyond the understanding of the defense and is not
10 justified by the record.
11

12 The prosecution devote two small paragraphs
13 to DOHIHARA's contribution to the Tri-Partite Pact.
14 The only connection that they can give is the fact the
15 Germans gave him a medal or two. The court can take
16 judicial knowledge that the Germans were a people who
17 loved medals and gave medals in order that they
18 could receive medals. DOHIHARA had contributed nothing
19 of which he was conscious to the Tri-Partite Pact and
20 as a matter of fact did not know that he was to receive
21 the medal. The reason given for the presentation of
22 the medal refers to his activities as Inspector General
23 of the Army Air Force and the only reason appearing
24

25 a. T. 30,109-10-11.
* T. 695, Ex. 104; T. 30,330.

1 in the record which can account for him having received
2 it was simply because he was the head of the department.
3 He was surprised, as were his subordinates, when the
4 medal was presented to him and he uttered words of
5 surprise upon receiving it.^a The authority for this
6 last statement is taken from a defense witness but
7 the prosecution did not attempt in any manner to rebut
8 his testimony and it stands in the record without
9 contradiction. We shall not discuss this question
10 any further.

11 In the prosecutions summary of DOHIHARA's part
12 in the Pacific War they state that, at the time the
13 Japanese started the surprise attack on Pearl Harbor,
14 DOHIHARA was the Chief of the Air Inspector General
15 and concurrently Supreme War Councillor. They make
16 much of the fact that he attended a meeting of the
17 Supreme War Council, presided over by TOJO, in which
18 meeting they claim candid views were exchanged regarding
19 the fast-moving international situation and the attitude
20 to be taken by Japan.^b They do not assert that
21 DOHIHARA expressed any opinion whatsoever because he
22 did not.
23

24 Further mention is made of the fact that

- 25 a. Ex. 3188, T. 28,746, 28,747.
b. Pros. Sum-P. BB-36

1 DOHIHARA was the Commanding General of the Eastern
2 Area Army which they claim was apparently directed
3 against the United States and that he was later
4 appointed Commander of the 7th Area Army at Singapore.
5 Also they say that at one time he was Commander of
6 the Area Army embracing the area around Tokyo while
7 concurrently holding the position of Commander of the
8 Eastern Area Army and the position of Supreme War
9 Councillor. None of these facts do we deny. As a
10 matter of fact we have introduced testimony ourselves
11 which would show he held these positions. The
12 prosecution know that there are literally hundreds
13 of persons, not in the dock, who had more to do with
14 the Pacific War than did General DOHIHARA. They also
15 know that were it not for the events which occurred
16 in Manchuria and China DOHIHARA would never have been
17 selected as one of the persons to be tried by this
18 Tribunal.

19 In the first place the position held by
20 General DOHIHARA at the outbreak of the Pacific War
21 was a position which had no tactical or operational
22 command authority. As a matter of fact DOHIHARA,
23 because of the position held, was precluded from
24 participating in the preparation or planning of any
25 operational or tactical mission.^a The reason that we

a. Ex. 3188, T. 28,743.

1 can state with assurance that the prosecution recognize
2 that he could not have had anything to do with the
3 commencement of the Pacific War is because they did
4 not attempt in any manner to answer the defense
5 testimony on that score. It is unanswerable because
6 it is true. We admit that DOHIHARA was at one time
7 Inspector General of Military Education but in that
8 position he had no authority and, as a matter of
9 practice, took no part in any planning or operational
10 matter and had absolutely no voice in any decision
11 with reference to tactical planning or operations in
12 the field. ^b

13 But to return to the date of June 30, 1941,
14 when DOHIHARA, as Supreme War Councillor, attended a
15 meeting which was addressed by General TOJO, the then
16 War Minister. The prosecution rely on a news story
17 for their information and attempted to secure nothing
18 more reliable on the point than this news story.

19 Because of the subsequent attitude of the Tribunal --

20 Am I getting in deep water again, sir?

21 THE PRESIDENT: No, go ahead.

22 MR. WARREN (Continued): Because of the
23 subsequent attitude of the Tribunal toward news stories
24 we feel little value will be attached to this particular

25 b. T. 28,744.

1 piece of evidence but since it is in evidence we must
2 analyze it. The article^{e.} states in substance that
3 General TOJO and other officials explained in detail
4 the fast-changing international situation. Nowhere
5 in this news story is there any reference whatsoever
6 to the Pacific War. It must be borne in mind that
7 the meeting occurred six months before the outbreak of
8 the Pacific War. There is no reason to believe there
9 was any occasion, at that time, to discuss future
10 war plans, if any there were, with the Supreme War
11 Councillors who had no authority anyway. The defense,
12 not being permitted to rely upon newspaper stories,
13 brought in a witness by the name of SANADA who attended
14 the meeting. We assume if we could find a witness who
15 attended this meeting so could the prosecution, and
16 if SANADA's story is not true they could have introduced
17 rebuttal testimony to disprove it. This meeting of
18 the Supreme War Council is the same one referred to in
19 Appendix E. of the Indictment does not mean that it
20 should be given any more significance than any other
21 bit of evidence gleaned from decidedly unreliable
22 sources. The meeting was not even an official one
23 and the Supreme War Council was not called upon to
24 a. T. 16,179.
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We shall not discuss the ~~command respon-~~
1 sibilities of the various other positions which DOHIMARA
2 held during the progress of the Pacific War except
3 insofar as they relate to his responsibility for the
4 treatment of prisoners of war. If he is to be found
5 guilty simply because he held command positions, a
6 situation which we cannot conceive, there is nothing
7 defense counsel or any other person can do because
8 we admit, as previously stated, that he held such
9 positions.
10

11 The prosecution have set aside special space
12 in their argument for what they term DOHIMARA's
13 responsibility for maltreatment of prisoners of war.
14 However, under another heading concerning the alleged
15 activities of DOHIMARA after the Marco Polo Incident,
16 they accuse him of permitting the bayoneting of seven
17 Chinese civilians after three days of starvation. We
18 take it that such a subject should properly come under
19 the heading of the mistreatment of prisoners of war,
20 even though in this instance the persons alleged to
21 have been bayoneted were civilians but we shall
22 treat with the situation at this time. The prosecution
23 rely on their Exhibit 348^e a part of which was read
24 into the record. This document, headed "Affidavit",
25 a. T. 4646.

1 was made by a person whose identity we are unable to
2 determine accurately because the person who apparently
3 made it refers to the enemy, but the only name that
4 appears which might have been the person who made
5 the affidavit is that of a Japanese attached to the
6 5th Japanese Station.

7 In reading the argument of the prosecution
8 in their reference to this obscure affidavit, one
9 would gather the impression that DOHIHARA was present,
10 knew of the full circumstances and permitted the
11 executions to take place. However, the warrant officer
12 who was in charge of the gendarmes who committed the
13 act was stationed at the Hsiang-Tai District, Hopei
14 Province which was never under the command of General
15 DOHIHARA and we defy the prosecution to show that it
16 was. At that time General DOHIHARA was Commander of
17 the 14th Division which had its headquarters or home
18 quarters in Utsunomiya, Japan^a, which fact the
19 prosecution admits.
20

21 At this point, your Honor, I am going to
22 have to submit an additional errata sheet because this
23 can be misconstrued. What I meant was that General
24 DOHIHARA never had under his command the gendarmes

- 25 b. Pros. Sum P.BB-33.
a. T. 15,715.
b. Pros. Sum. P.BB-33.

1 and I did not mean by saying "headquarters, Utsunomiya,
2 Japan" that he was in Japan. He actually was in
3 China at that time.

4 The 14th Division never had any gendarmes
5 under its jurisdiction, a fact of course known to the
6 defense; consequently by no conceivable analyzation
7 of the testimony could we have connected DOHIHARA with
8 this particular incident and therefore are in no
9 position to bring the true facts before the Tribunal.
10 Be that as it may, the fact still remains that the
11 onus is on the prosecution to prove the guilt of the
12 accused beyond a reasonable doubt and if DOHIHARA had
13 command jurisdiction over these prisoners of war
14 the prosecution utterly failed to prove it. We realize
15 that the prosecution, in their summation, should be
16 permitted to draw any reasonable inference from the
17 record but we assert in this instance they have gone
18 completely beyond the record. There is not one word
19 of evidence to support their statement that DOHIHARA
20 permitted the Japanese gendarmes to do the acts complained
21 of and putting such a statement in their argument, as
22 a statement of fact, is wholly unwarranted and is not
23 supported by the record. We feel constrained to
24 argue the point a little further on a pure legal basis.
25 The affidavit in question states that these civilians

1 who were supposed to have been killed were under
2 suspicion of being guerillas.^a We submit that as a
3 legal proposition if these people were guerrillas,
4 sniping and fighting the Japanese forces without
5 benefit of a uniform of any nation, they do not
6 come under the protection of the rules of land warfare
7 and from a purely legal standpoint the Japanese had
8 a right to kill them.

9 The prosecution argues that when DOHIHARA
10 was Commander of the Eastern Area Army he had jurisdiction
11 over prisoners of war camps located in the Tokyo area.
12 They mention one of his visits to a camp stating that
13 the conditions of the camp were not improved after
14 his visit.^b It is interesting to note the manner in
15 which the prosecution couch their argument to the
16 effect that the conditions were not improved after
17 his visit but they had a reason for it. Their citation
18 of authority for their statement that DOHIHARA visited
19 the camp is a part of the direct testimony of the witness,
20 Chisholm; a former prisoner of war.^c
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24 a. T. 4646.
25 b. Pros. Sum. P BB-37.
c. T. 14,272

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1 Much of the defense testimony, which we will not cite
2 at this time because it includes many documents and
3 witnesses, tends to show that DOHIHARA was basically
4 opposed to the mistreatment of prisoners, a fact
5 which the prosecution did not attempt to meet in
6 their rebuttal testimony. It would, as a matter of
7 fact, be impossible for them to meet any such proposi-
8 tion because DOHIHARA's attitude, as outlined by the
9 defense witnesses, was an actual existing fact. He
10 did not knowingly permit the mistreatment of prisoners
11 and always issued orders to the contrary and the
12 testimony of the prosecution witness, Chisholm, is
13 unquestionably the best evidence we could have on
14 that score. Chisholm states, in substance, that
15 DOHIHARA did visit the prisoner of war camp but that
16 before all such visits the camp was cleaned very
17 thoroughly from ten to fifteen times^a. No stronger
18 evidence could possibly be obtained to prove that those
19 who were actually responsible for the treatment of
20 prisoners of war were knowingly disobeying the orders
21 of General DOHIHARA, otherwise there would have been
22 absolutely no necessity to clean the camp ten to
23 fifteen times.
24

25 At that time the main function of the Eastern
a. T. 14277-14278.

1 Area Army was the defense of Tokyo and adjacent
2 territories. DOHIHARA had under his direct command
3 several divisions, units, hospitals and other special
4 units; literally hundreds of separate units^{a.} and
5 since there was only a total of some 4,000 prisoners
6 in his command area, it naturally follows that with
7 all the requirements of his job, he would have little
8 time to devote to that question. The fact that he
9 even visited the prisoner of war camps should be a
10 factor in his favor because certainly with all the
11 manifold duties he had there would be no requirement
12 for him to do so, and no legitimate criticism could
13 have been given him for his failure so to do. Actually
14 there was a separate program set up for the handling
15 of prisoners of war and the head of that activity was
16 not under the command of the Commanding General of
17 the Eastern Area Army^{b.} but was under the direct
18 control of the Minister of War. This organization
19 applied to the whole of Japan, but there was in the
20 Tokyo District an area office^{c.} and, while according
21 to the official chain of command the Commander of the
22 Eastern Area Army was responsible for the control and
23 administration of prisoners of war in his territorial
24

25 a. Ex. 3189, T. 28751-28752.

b. T. 28752.

c. T. 28752.

1 jurisdiction, actually this bureau operated to
2 relieve him of administrative responsibility for
3 prisoners of war, permitting the Commander to devote
4 more time to his many other duties.^{a.}

5 DOHIHARA never received a single complaint,
6 either from his superior officers, or his subordinate
7 officers, with reference to mistreatment of prisoners
8 of war while he held the command post in the Tokyo
9 area. He did receive reports on general conditions
10 but they did not refer to mistreatment of prisoners.^{b.}
11 He was interested in the welfare of prisoners and
12 took occasion to visit the camps under his control.
13 On one occasion, learning that a camp was not adequate-
14 ly supplied with skilled medical care, he managed to
15 make arrangements to provide the camp with such care
16 even though many units and detachments of the Japanese
17 Army and many civilian communities were as devoid of
18 medical attention as the prisoner of war camp.^{c.}
19

20 DOHIHARA had no say whatsoever in the policy
21 with reference to the handling of prisoners of war.
22 Such policies were formulated on higher levels and
23 forwarded to him for compliance.^{d.}

24 As the Tribunal will note, much of the

- 25
a. T. 28753.
b. T. 28754.
c. T. 28754.
d. T. 28754-28755.

1 testimony relied upon by us in this phase of our
2 argument is defense testimony which the prosecution
3 had an opportunity to rebut. The mere fact that the
4 prosecution never even attempted to refute the testi-
5 mony in any respect, especially with reference to
6 the policy for the handling of prisoners of war and
7 their control, indicates strongly that the defense
8 made no mistake in its evidence. We ask the Tribunal
9 to recall that not one word of acceptable rebuttal
10 evidence was offered by the prosecution against
11 DOHIHARA and that not one word of rebuttal evidence
12 was introduced.

13 The prosecution in their argument proceed to
14 the time when DOHIHARA was Commander of the 7th Army.
15 They do not list any specific act, or, for that
16 matter, any act concerning the mistreatment of prisoners
17 of war during that period of time, but content them-
18 selves with stating in very broad terms that the
19 testimony of the defense witness FUHA was speculative
20 and base their entire argument against DOHIHARA for
21 mistreatment of prisoners of war upon an attack of the
22 defense evidence. They state that the defense witness
23 FUHA made the statement that at no time was any
24 prisoner of war camp located within the territorial
25 jurisdiction of the 7th Area Army, even under its

control.^{a.} We assume this to be a typographical
1 error because we do not deny that there were
2 prisoner of war camps located within the territorial
3 jurisdiction of the 7th Area Army, but we do state
4 that such camps were never under the control of the
5 7th Area Army.^{b.}

6
7 Attached to exhibit 3186 is a chart which
8 clearly demonstrates the command channels with refer-
9 ence to prisoners of war with relation to the 7th
10 Area Army. The only responsibility which the
11 Commander of the 7th Area Army had was that of
12 security.^{c.} The prosecution make reference to the
13 fact that they read to the witness FUHA an ordinance
14 of prisoner of war camps under date of 23 December
15 1941, which, in substance, stated that such camps
16 would be administered by a Commander of an army or
17 Commander of a garrison, under the general super-
18 vision of the Ministry of War, and they state the
19 witness merely explained that this provision applied
20 to the prisoners of war in the Japanese homeland.^{d.}
21 The statement of FUHA was not any explanation whatso-
22 ever; it was a plain statement of fact in which he
23 said, in substance, that those provisions applied to
24 the prisoners of war camps in the Japanese homeland.
25

a. Pros. Sum. BB-37.

b. Tr. 28725.

c. Tr. 28726.

d. Pros. Sum. BB-38.

1 Nor did he say, as the prosecution state that he did,
2 "and as far as prisoner of war camps overseas were
3 concerned," (prosecution summation BB-38). He used
4 a much stronger expression and stated "that when
5 prisoner of war camps overseas are considered."^a
6 He believes that it should be interpreted that the
7 Commander of the Southern Army was the Commander
8 referred to in Article 3.

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^a. Tr. 28733.

1 As previously stated, he did not merely ex-
2 plain something; he spoke authoritatively. In any
3 event, if his testimony had been untrue it would have
4 been a very simple matter for the prosecution to secure,
5 as we did, a witness from the 1st Demobilization Office,
6 which is now the official custodian of the Japanese
7 army records. Any official of that organization could
8 testify that the set-up as given by FUHA was an error
9 if in truth it was. Instead of doing that, they con-
10 tent themselves with saying that FUHA's interpreta-
11 tion was purely speculative, and give as their reason
12 the fact that a certain AYARE, Kitsuju, a witness for
13 ITAGAKI, stated that when ITAGAKI was transferred to
14 Singapore from Korea there was a marked improvement in
15 the prisoner-of-war camps. Based on this citation,
16 they state as a positive fact that it is well estab-
17 lished that ITAGAKI, after taking over the command of
18 the 7th Army as successor to DOHIHARA, did assume an
19 active control over the prisoner of war camps, and con-
20 clude therefore that there is not the slightest tinge
21 of truth in the statement of FUHA. The reference which
22 the prosecution give^a has been read carefully by
23 counsel, but in order to get the full picture the
24
25 a. Ex. 3312, tr. 30,218

preceding page and the following page must be read.

1 If this be done, it can be seen that the witness never
2 made any assertion that ITAGAKI assumed control over
3 the prisoner-of-war camps within the territorial juris-
4 diction of his command. It is true that he did make
5 the statement that he had an opportunity to inspect
6 prisoners of war and part of the camp accommodations at
7 Camp Changi in Singapore, and he does state ITAGAKI
8 attempted to give the best treatment possible to
9 prisoners of war. But there is nothing in the testi-
10 mony which would justify the conclusion that ITAGAKI
11 assumed control over prisoner-of-war camps. The
12 prosecution again failed to analyze the testimony,
13 because had they done so they would have taken into
14 consideration the testimony of FAZEYAWA, who also testi-
15 fied on behalf of ITAGAKI. This witness states that
16 the prisoner-of-war camps were under the command of
17 the Commander-in-Chief of the Southern Army and the
18 local army commander had control over them in limited
19 matters, and that the scope of authority of an army
20 commander, as set forth in the regulation, was limited
21 to supply of provisions, guard duties, etc. He goes
22 on further to state that the system of administration
23 of prisoners of war was set forth by the POW's Adminis-
24 tration Bureau in Japan and by the Southern Army^a

25 a. Ex. 3311, tr. 30,197

1 The testimony of this witness was in exact accord with
2 the testimony of the witness FUHA, and a check of the
3 chart heretofore referred to will reveal that the testi-
4 mony, which refutes the assumption of the prosecution,
5 we should like to refer to the direct testimony of Colonel
6 Wild, who testified for the prosecution. He stated
7 that until September 1942 the prisoners of war were
8 under the control of the 25th Army Headquarters, but
9 that in September 1942 they were removed from the
10 control of the 25th Army and put in charge of a special
11 body of officers who belonged specifically and entire-
12 ly to POW Administration, and he states that in Malaya
13 and Sumatra the POW's were grouped together into one
14 POW area under the command of Major General FUKUYE
15 and the POW Administration.^a Further in his testimony,
16 in discussing the question of labor with reference to
17 POW's and as to who had the final choice, he stated,
18 in substance, that ultimately it was the POW Adminis-
19 tration, and no one could be taken out of the camp
20 without its permission.^b Colonel Wild in his testi-
21 mony made several other references of like character
22 which proves that he knew where the authority over the
23 prisoners of war was centered. His testimony corroborates

24 a. Tr. 5389

25 b. Tr. 5391

that of the defense. When TOJO was on the stand for
1 cross-examination, the President of the Tribunal asked
2 him questions concerning the duties and responsibilities
3 as to prisoners of war, civilian internees and mili-
4 tary administration of occupied territory with refer-
5 ence to the Commander-in-Chief of the Southern Army, the
6 Commander-in-Chief of the 7th Army, and the Commanders-
7 in-Chief of the 16th, 25th, 29th, and 37th Army.^a Then
8 the question was asked concerning the 7th Army, TOJO
9 answered that the authority for supervising prisoners
10 of war was vested in the Commander-in-Chief of the
11 Southern General Army.^b To further corroborate the
12 testimony of the defense, we should like to invite the
13 Tribunal's attention to prosecution exhibit 1681.^c
14 This is an affidavit of one NAKATA, Masayuki, a former
15 colonel in the Japanese army. He states, in substance,
16 that he arrived at Batavia on 13 March 1944 as successor
17 to General SAITO and that he was charged with the con-
18 trol of prisoner-of-war camps. He further states that
19 his immediate chief was Field Marshal Count TERAUCHI,
20 whom the Tribunal will remember as Commander-in-Chief
21 of the Southern General Army. This last affidavit is
22 their own testimony and they are bound by it. We
23

24 a. Tr. 36,804

25 b. Tr. 36,805

c. Tr. 13,486

1 assert that the interpretation given by our witness
2 FUHA was not speculative; on the contrary, the argu-
3 ment of the prosecution is so highly speculative and
4 their conclusions so unsound and so far from the
5 actual evidence that their statement that there was
6 not the slightest tinge of truth in the testimony of
7 FUHA merits no consideration.

8 The only other place where the prosecution
9 attempt to connect DOHIHARA with any atrocity is in
10 their general argument,^a where they refer to the crew
11 of a B-29 having been shot down and that as a result
12 the crew members received severe burns but received
13 no medical treatment. The only reason they attempt to
14 connect DOHIHARA is because they state that the Outram
15 Road Gaol where the fliers were incarcerated was under
16 DOHIHARA's control as Commander of the 7th Area Army.
17 We have already discussed at length and introduced
18 evidence to show that prisoner-of-war camps were not
19 under the control of the 7th Area Army and consequently
20 DOHIHARA should not be held responsible for the treat-
21 ment of prisoners of war, because he had absolutely
22 nothing to do with it. The prosecution do not attempt
23 to show that the situation complained of was ever called
24
25 a. Pros. sum. p. J-79, par. J-154

1 to the attention of General DOHIHARA, and as a matter
2 of fact, we know that it was not; otherwise there would
3 be evidence to that effect.

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 (Whereupon, at 1045, a recess was
7 taken until 1100, after which the proceed-
8 ings were resumed as follows:)

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Colonel Warren.

MR. WARREN: In conclusion we should like to refer the Tribunal to that portion of the prosecution's general summation dealing with what they term the liability of the defendants.^a It is their contention that none of the accused have been charged because of any act committed by him or any statement made by him in the course of his official duties, pursuant to an already established policy if those matters were his only connection with that aggressive policy. It is interesting to note that the prosecution use the words "aggressive policy" and we can only assume that they do so advisedly, realizing that a person carrying out a policy established by his superiors could not be found guilty under the terms of the Charter unless that person, himself, had something to do with the formulation of the policy in question. In their review of the testimony the prosecution has not shown one single instance when DOHIHARA ever established, or had part in the establishment of, a policy of aggression or, for that matter, any policy having to do with any course of action to which Japan as a nation had

a. Pros. Sum. P. K-2, Par. K-3.

1 dedicated herself. We stated at the outset that DOHI-
2 HARA was but an instrumentality used by other persons
3 for carrying out whatever plans or schemes as may have
4 already been in existence. If the accused are not
5 responsible for any act committed, or any statement
6 made by them in the course of their official duties,
7 pursuant to established policies, even though they
8 be aggressive policies, then the statement of the
9 prosecution that no man has been charged for such
10 reason is entirely erroneous. We challenge the prose-
11 cution in their rebuttal to show by actual citations
12 of the record that DOHIHARA ever formulated or helped
13 to formulate any one of the policies which the prose-
14 cution had in mind at the time they wrote their summa-
15 tion. In issuing our challenge we have well in mind
16 the fact that the prosecution has already demonstrated
17 their ability to draw conclusions not warranted by the
18 evidence, and it is not this type of argument we are
19 asking for; it is the facts as actually contained in
20 the record. We are confident that such facts do not
21 exist.
22

23 Later, in the same paragraph in their general
24 statement ^a the prosecution assert that DOHIHARA would
25 not have been charged with crimes against China if his
a. Pros. Sum. Page K-2, Par. K-3.

1 only actions had been to carry out military operations
2 pursuant to orders from the General Staff; that he
3 was charged because of his activities in instigating
4 the matter and in bringing about the adoption of the
5 program of aggression. We will take the prosecution
6 at their face value; and, if they mean what they say,
7 and we have no reason to doubt that they do, we ask
8 the Tribunal then to disregard everything they said
9 concerning General DOHIHARA when he was Commander of
10 the Eastern Area Army and of the 7th Area Army, and
11 during the period of time when he was the Commander
12 of the 14th Division in China. In short, we ask the
13 Tribunal to disregard every bit of evidence intro-
14 duced by the prosecution from the day that DOHIHARA
15 became Commander of the 14th Division at Utsonomiya,
16 Japan, until the termination of the war. By their
17 statement, just referred to, the prosecution has re-
18 lieved the Tribunal of the necessity of considering
19 any of the testimony regarding DOHIHARA's so-called
20 activities in the Pacific War. If this last state-
21 ment of ours is not true, then let the prosecution
22 cite one single instance which would remove DOHIHARA
23 from the category of those persons who acted only
24 pursuant to orders, or let them further explain the
25 meaning of their statement so as to include DOHIHARA.

1 The prosecution's remark that DOHIHARA was
2 charged because of his activities in instigating the
3 matter and bringing about the adoption of the program
4 of aggression is not too clear because they do not
5 specifically state what matter they were referring
6 to. However, it is apparent they are speaking about
7 his actions in China, and we have already shown by
8 our summation that DOHIHARA never instigated or formu-
9 lated any policy to which Japan was committed, but
10 always acted under orders. The record is clear on
11 this point. We, therefore, submit that the prosecu-
12 tion in the portion of the general summation just
13 discussed set their own yard-stick for the measurement
14 of those subject to punishment and, having done so,
15 they are bound by it. If this is the criterion by
16 which these men in the dock are to be judged, then not
17 only has the prosecution utterly failed to prove their
18 case, but they should never have charged DOHIHARA in
19 the first place.

20 We have now arrived at the conclusion of our
21 summation and we will probably not appear before the
22 Tribunal on behalf of DOHIHARA again. My client and
23 my colleagues have asked me to convey to the Tribunal
24 their sincere appreciation for the Tribunal's kindly
25 consideration of our problems and for its great patience

1 which it has been able to maintain throughout the long
2 arduous months already consumed in this trial and we
3 thank you most sincerely.

4 THE PRESIDENT: Colonel Warren.

5 MR. WARREN: If the Tribunal please, we will
6 next proceed to the reading of the summation for
7 HIRANU^{MA}.

8 In presenting the individual summation of
9 HIRANU^{MA}, we shall be as brief as possible and will
10 not, for the most part, discuss those phases of his
11 defense which we feel have been adequately covered by
12 the general summations except to mention them in
13 passing; nor will we waste our time in a vain attempt
14 at denial of obviously proven facts.

15 We do not deny that HIRANU^{MA} was at one time
16 President of Kokuhonsha. The purpose, objectives and
17 other allegations by the prosecution with respect to
18 this association^a are of quite a harmless nature.
19 They must prove something more concrete to charge
20 against HIRANU^{MA} than anything in connection with
21 this association, because being a rightist in Japan
22 could mean a hundred different things. In some cases
23 one may bolster the traditional national belief in
24 the divine ancestry of the Emperor while in other
25 a. Pros. Sum., par. EE-5, p. 2

1 cases his main efforts may be directed to combatting
2 communism in the country. There is no offense in
3 such activities and they are not indictable under
4 the Charter of this Tribunal. The various nations
5 of the world, seeking peace, believe at one and the
6 same time that atomic energy is the harbinger of peace
7 or that communism is the sole gospel of peace. As
8 long as these beliefs are not used as a means of
9 aggression or conquest there is no crime and those
10 who believe in them remain immune from punishment.
11 The prosecution omitted to prove what crimes the
12 rightist association Kokuhonsha is supposed to have
13 committed.

14 Yet the prosecution alleges that Kokuhonsha
15 was an instrument used by HIRANU^aLA for political pur-
16 poses. Unless they prove the criminal purposes
17 HIRANU^aLA pursued in using Kokuhonsha they have no
18 right to charge it against him. The only evidence
19 cited to substantiate the allegation is an entry
20 in the HARADA diary and we submit it is far too
21 vague to justify such a charge. In citing this evi-
22 dence the prosecution says "for example" as if there
23 are many other facts to prove their allegation but
24 we fail to find anything of the kind in the enormous
25 a. Pros. Sum. par EE-6, p. EE-2

1 jumble of their evidence. We hold this simple truth
2 to be self evident, that any citizen of the world of
3 whatever nation has the inalienable and fundamental
4 right to whatever political or religious belief as
5 to him may seem just and proper; that in the exer-
6 cise of those beliefs he commits no sin against his
7 god or offense against mankind; that his peaceful
8 persuasion of his fellow man is no crime and that
9 only does he merit punishment when he shall have by
10 force or coercion attempted to enslave other men to
11 his own ideals -- then, and only then, does he com-
12 mit sin before God and indict himself in the eyes
13 of man.

14
15 PRIVY COUNCIL

16 The prosecution, in their general summation,
17 discussing the liability of the defendants state
18 that "no man has been charged in this proceeding
19 because of any act committed or any statement made
20 by him in the course of his official duties pursuant
21 to an already established policy if those matters
22 were his only connection with that aggressive policy,"^a
23 and that "to determine whether any defendant had an
24 ultimate duty or responsibility by imposition of law,
25 it is necessary to consider the Japanese political
a. Pros. Sum. par. K-3, P. K-2.

1 structure." ^b With respect to the responsibility of
2 the Privy Council the prosecution states that "this
3 body, whose functions are recognized in the consti-
4 tution, had power to deliberate and pass on matters
5 under its jurisdiction according to the constitution,
6 ordinances especially referred to it, drafts of laws
7 and doubtful points relating to the constitution, laws
8 and Imperial ordinances supplementary thereto, Im-
9 perial ordinances under Article 8 and 10, the con-
10 clusion of international treaties, the proclamation
11 of martial law, important Imperial ordinances con-
12 cerning education, those concerning the organization
13 of various branches of administration and all other
14 matters specifically referred to the Council. It is
15 apparent that all important legislation had to re-
16 ceive the sanction of the Privy Council before it
17 could become effective." ^c

18
19 Since HIRANUMA served as Vice President of
20 the Privy Council from 1926 to 1936 and then as its
21 President until March 1939, it is highly important
22 that we present to the Tribunal the real scope, power
23 and authority of the Privy Council as well as that of
24 its President and Vice-President.

25 b. Pros. Sum. par K-11, p. K-11
c. Pros. Sum. par. K-19, p. K-20

1 In their summation the prosecution enumerate
2 the various functions of the Privy Council, as those
3 being defined in the Imperial Ordinance of 1890 and
4 state that "the Privy Council was a body whose ad-
5 vice, under the ordinance defining its powers promul-
6 gated in 1890, was to be solicited by the Emperor on
7 constitutional questions treaties and agreements, and
8 prior to the issuance of Emergency Imperial Ordinances
9 when the Diet was not in session and to the enactment
10 of ordinary legislation to be submitted by the Cabinet
11 to the Diet,"^a and further say that "The Council be-
12 came, however, a Third Chamber with broad supervisory
13 powers over the executive in both foreign and domestic
14 matters, owing no political responsibility to the
15 Diet or the people, yet exerting important influence
16 over the entire affairs of the State. On bills
17 which had been introduced by Diet members and had
18 passed the Diet, it could either approve or dis-
19 approve in toto regarding projects of law which had
20 been submitted to it by the Cabinet before intro-
21 duction in the Diet, it could not only veto but could
22 also freely exercise its amending power."^b
23
24

25 a. Pros. Sum. par. EE-10, p. EE-3

b. Pros. Sum. par. EE-10, p. EE-3,4.

1 The Tribunal's attention is respectfully
2 drawn to a discrepancy between the definition given
3 in the prosecution's general summation and that set
4 forth in the individual summation. In the former
5 it is said that "all important legislation had to
6 receive the sanction of the Privy Council before
7 it could become effective,"^a and in the latter it
8 is stated so as to appear that all the bills of
9 legislation are referred to the Privy Council
10 before they are submitted to the Diet and they
11 allege that the Privy Council became a Third Chamber
12 with broad supervisory powers.^b

13 Apparently the prosecution is under a grave
14 misapprehension regarding the true scope of authority
15 of the Privy Council and have consequently greatly
16 exaggerated and overrated its political importance.
17 The true test is the provisions of the Imperial
18 Ordinance of 1890 which organized the Council and
19 defined its power. Article 6 of the Ordinance pro-
20 vides that:

21 "The Privy Council shall hold deliberations,
22 and present its opinions to the Emperor for his
23 decision on the undermentioned matters:
24

- 25 a. Pros. Sum. par. K-3, p. K-2.
b. Pros. Sum. par. EE-10, p. EE-3,4.

1 1. Matters which are under the jurisdiction
2 of the Privy Council according to the constitution
3 and the Imperial Household Ordinances and Ordinances
4 that are specially referred to the Privy Council by
5 the Emperor.

6 2. Drafts and doubts with reference to the
7 Articles of the Constitution.

8 3. Laws and Imperial Ordinances incidental
9 to the Constitution.

10 4. Amendment of the organization and the
11 regulation for the conduct of business of the Privy
12 Council.

13 5. Imperial Ordinances as provided for in
14 Articles 8 and 70 of the Constitution.

15 6. Conclusion of international treaties.

16 7. Proclamation of martial law as provided
17 for in Article 14 of the Constitution.

18 8. Important Imperial Ordinances concerning
19 education.

20 9. Important Imperial Ordinances concerning
21 the organization of various branches of administra-
22 tion and other official regulations.

23 10. Imperial Ordinances concerning the
24 causes of honors and amnesty.

25 11. Matters other than those listed in the

1 preceding Numbers and especially referred to the
2 Privy Council by the Emperor.^a

3 There is nothing in the above provision to
4 establish the allegation of the prosecution that
5 "all the important legislation had to receive the
6 sanction of the Privy Council before it became
7 effective."^b The above list of matters which were
8 to be submitted to the Privy Council's deliberation
9 do not include legislation on Industry, National
10 Defense, "ational mobilization or State Finance.
11 Nor does the above provision show that "the ordinary
12 legislative bill is first referred to the Privy
13 Council before it is submitted to the Diet." Those
14 legislative bills which are to be submitted to the
15 Privy Council are very clearly and definitely de-
16 fined. Therefore, unless the prosecution succeeded
17 in proving that such measures were actually taken
18 under consideration by virtue of Article Eleven,
19 which they did not do, their allegations must
20 collapse.
21

22 As to the assertion that the Privy Council
23 became a Third Chamber with broad supervisory powers
24 over the executive branch in both foreign and domestic

25 a. Ex. 83, P. 1; Tr. 505.
b. Pros. Summ. par. KK-19, P. 20

1 through. The record of the eighth meeting held on
2 21 October shows that "Chairman SUZUKI proceeded to
3 give an account of his interview with Prime Minister
4 TOJO concerning the negotiations for the amendment
5 of the original proposal agreed upon at the previous
6 Committee meeting. He said that the Prime Minister
7 was firmly determined to adhere to the original pro-
8 posal, and could under no circumstances agree to
9 the amendment, and that the committee, therefore,
10 had no choice but to express its views frankly
11 when reporting the results of the investigation. All
12 committeemen expressed thanks to the chairman and
13 decided to drop the problem."

14 The evidence further shows that on such a
15 vitally important decision as that of initiating
16 war against the United States and Great Britain the
17 advice of the Privy Council was not solicited by
18 the Emperor. The meeting of the Privy Council to
19 deliberate on the Imperial Rescript of December
20 8, 1941 declaring war against the United States and
21 the British Empire was convened after the commence-
22 ment of hostilities at Pearl Harbor.^a Exhibit 1241,^b
23 which is a record of the meeting of the Inquiry
24

25 a. Ex. 1240, Tr. 10,686
b. Ex. 1241, Tr. 10,690

1 Committee of the Privy Council, reveals that at this
2 meeting Councillors met at 7:30 a.m., December 8,
3 1941 (Tokyo Time) and before the President HARA
4 formally opened the meeting, Navy Minister SHIMADA
5 reported on the starting aspect of the war opened
6 against America and England.

7 It is true the witness FUJITA testified to
8 the effect that if the Privy Council withheld its
9 approval from an enactment upon which the approval
10 was required, and if the bill was an important one
11 the bill would either be changed or it (might)
12 cause the resignation of the cabinet. But it is
13 also true that on redirect examination the same
14 witness stated that he did not remember an actual
15 example of it; he framed his answer in this manner:
16 ". . . it was a hypothetical case."^a Witness FUJITA
17 also testified that it is not accurate to say that
18 the relations of the Privy Council to the State were
19 both executive and legislative and that the Privy
20 Council amended many of the drafts of new laws and
21 ordinances before they are submitted to the Diet.^b

22 If the Privy Council actually was a Third
23 Chamber, with such powers as alleged by the prosecu-
24 tion, why then was it not consulted about the commence-
25 a. Tr. 17,591, 2/28/47 b. Tr. 17,564, 2/28/47

1 ment of war against the United States and Great
2 Britain?

3 Article III of the Regulations for the
4 Conduct of Business of the Privy Council provides
5 that "the Privy Council shall have official connection
6 with the cabinet and the Ministers only, and officially
7 shall not communicate or have any connection whatever
8 with the Imperial Diet or any Japanese subjects."^a

9 The provision speaks for itself. The Privy Council
10 was secluded from the outside world by law. Its only
11 channel of communication was the cabinet and its
12 members. Being placed in such an isolated position
13 it could not or would not be allowed to make inquiries
14 about state affairs submitted to it other than
15 through the restricted official channel even when it
16 deemed such inquiries necessary. How could a body,
17 bound by such a restriction, exercise a vast power of
18 supervision or, for that matter, any power at all over
19 the cabinet or the executive branch of the government?
20

21 What could the Privy Council do? What was
22 the true scope of its power? The answers to these
23 questions can be easily found in evidences produced
24 by both the prosecution and defense if one has a
25 discerning eye.

a. Ex. 83, p.4, Tr. 505, 6/13/46

1 The prosecution rightly states that Article
2 LVI of the old Japanese Constitution provides that
3 advice of the Privy Council is given when it is
4 solicited by the Emperor.^a In other words, unlike
5 the cabinet, it could not submit advice without
6 being asked for it. It is also true that the
7 actual power of decision of what was to be submitted
8 to the Privy Council lay with the Cabinet.^b These
9 legal characteristics of the Privy Council as just
10 stated are the prosecution's version as stated in
11 their opening statement and in which we fully concur.
12 Article VI of the Privy Council Ordinance already
13 referred to provides for matters which were to be
14 submitted to the Privy Council. However, in the
15 practical application of the rule the cabinet had
16 the power to decide what matters were to be submitted
17 and this is the true interpretation of the law.

18 Article VIII of the Privy Council Ordinance
19 provides that "Though the Privy Council is the
20 Emperor's highest resort to counsel, it shall not
21 interfere with the executive."^c The meaning of this
22 provision has been clarified by the testimony of the
23 witness FUJITA to the effect that the Privy Council
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25
a. Tr. 550, 6/13/46
b. Tr. 551, 6/13/46
c. Tr. 17,516-7, Ex. 83, 2/28/47

1 was never policy forming and could not interfere with
2 legislative and administrative affairs.^a

3 The above cited provisions of the (old)
4 Constitution and the Privy Council Ordinance, to-
5 gether with the above interpretation, form the basic
6 principles underlying the practical working of this
7 Constitutional organ. These principles were very
8 jealously adhered to. Therefore, when advice was
9 sought by the Emperor on matters decided by the
10 cabinet, the Privy Council, in response, submitted
11 its advice in such a manner as not to interfere with
12 the actual policy of the executive Government then
13 in power. For instance, in the case of deliberations
14 on the Protocol between Japan and Manchukuo: even if
15 HIRANUMA, the chairman of the committee which inves-
16 tigated the bill, or any other councillor, doubted the
17 genuineness of the cabinet's statement that Manchukuo
18 became an independent state by virtue of the action
19 of its citizens, none of them could have made inquir-
20 ies or collected information other than through the
21 officially recognized channels of the cabinet or its
22 members.
23

24 The restrictions placed upon them by Article
25 III of the Regulation for the Conduct of Business

a. Tr. 17,563, 2/28/47

1 of the Privy Council precluded it. They even might
2 have had information contrary to the cabinet's pre-
3 sentation of the case but it would have been of no
4 use in the face of the explanation given by the
5 Cabinet Ministers. Therefore, if the executive
6 government had made up its mind to treat Manchukuo
7 as an independent state, the Privy Council could not
8 have interfered with its decision or policy. It did
9 not have possession of lawful means of investigating
10 the true facts and could not question the propriety
11 of the policy. Hence, this is the reason why the
12 Privy Council, after discussions between the Council-
13 lers and Cabinet Ministers, approved the bill unani-
14 mously, as mentioned in the prosecution's summation.^a
15 In this connection we respectfully refer the Tribunal
16 to the testimony of MINAMI, who stated that, "At times
17 the Privy Council expresses its views and advice on
18 government draft of plans, but it does not absolutely
19 oppose the government."^b The Councillors who mis-
20 trusted the policy of the executive government were
21 placed in a position of a judge whose duty it is to
22 administer a law which he believes to be a bad law.
23 Therefore, as far as the actual policy of the execu-
24

25 a. Pros. Sum., par. EE-21, p. EE-7
b. Ir. 20,025, 4/16/47

1 tive government was concerned the position of a
2 Privy Councillor was that of a man acting in the
3 course of his official duties pursuant to an already
4 established policy. According to the prosecution,
5 such a person should not be charged in this trial.^a

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a. Pros. Sum., par. K-3, p. 2.

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1 The President, Vice-President or Chairman of
2 the Investigation Committee of the Privy Council were
3 Chairmen of a deliberating body. They were simply
4 men presiding over a conference whose members had
5 equal votes. We submit that no special liability, if
6 any at all, should be imposed upon such men, as might
7 be done in the case of a head of a military force or
8 an administrative office; simply because they held
9 positions higher than ordinary members in the matter
10 of honor or social standing.

11 In the foregoing paragraphs we tried to clari-
12 fy the true scope of authority of the Privy Council
13 and its members. Basing our arguments mainly upon
14 rules of law governing it and now we shall proceed to
15 show the political reasons arising out of constitutional
16 practice of long standing, which prevented the Privy
17 Council from acquiring such vast power as is alleged
18 by the prosecution. The accused TOJO testified, in
19 reply to a question put to him by the Chief of the
20 prosecution, that the war against the United States,
21 Great Britain and the Netherlands was decided in his
22 cabinet; that it might not have been according to the
23 Emperor's will but it was a fact that because of his
24 (TOJO's) advice and that because of the advice given
25 by the High Command the Emperor consented, though

1 reluctantly, to the war.^a

2 The accused KIDO testified, in answer to
3 questions put to him by Mr. Keenan that under the
4 Japanese system a decision made by the cabinet and
5 the High Command could not be vetoed by the Emperor.^b
6 and it was a custom long prevailing in Japan in
7 constitutional practices.^c If such was the position
8 held by the Emperor in the Japanese political structure,
9 built upon a practice and usage long prevailing,
10 where does the Privy Council stand whose duty is to
11 serve the Emperor as his highest resort of counsel?
12 Categorically it would have been impossible for the
13 Privy Council to exercise a power and influence stronger
14 than that of the Emperor over the policy of the Cabinet
15 and the High Command.

16 We submit that the charges against HIRANUMA,
17 made by the prosecution in connection with numerous
18 events occurring during the period of time when
19 HIRANUMA served in the Privy Council, lack adequate
20 legal foundation. For the sake of brevity we shall
21 refrain from giving specific answers to every charge
22 made by the prosecution with respect to decisions of
23 the Privy Council upon the numerous matters submitted
24

25 (a. Tr. 36,780 Jan. 6, 1948
b. Tr. 31,379 Oct. 20, 1947
c. Tr. 37,380 Oct. 20, 1947)

1 to it and will rely on our arguments in the foregoing
2 paragraphs except in the cases treated in the follow-
3 ing paragraphs.

4 In the prosecution summation^a it is stated
5 that HIRANUMA attended the Imperial Conference of
6 11 January 1938 which we do not deny. Ex. 3264,^b
7 which is a record concerning the Imperial Conference
8 in question, discloses that Premier KONOYE told the
9 Lord Keeper of the Privy Seal that in proceeding with
10 the Imperial Conference, there would be no need of His
11 Majesty's speech, since he was going to bring a plan,
12 which for the most part was already decided, only it
13 would be formally decided before the Throne and "The
14 various circumstances were explained on the day before
15 the 10th to the President of the Privy Council, HIRANUMA,
16 by the Chief Secretary and the Vice-Minister of Foreign
17 Affairs."^c It shows that HIRANUMA was given less than
18 24 hours to consider such an important matter and that
19 the Imperial Conference was a formality more than
20 anything else, the actual plan having already been
21 decided upon in the Cabinet.

22 In the prosecution's summation^d it is stated

24 (a. Pros. Sum. par. EE-14, p. 5

b. Tr. 29,840

25 c. Ex. 3264, par. 3, p. 1; Tr. 29,841-2

d. Pros. Sum. par. EE-18, p. EE-6)

1 that the Manchurian Incident was considered by the
2 Privy Council. However the exhibit they cite reveals
3 that one of the Councillors asked a question regarding
4 "the improper action taken by the young officers of
5 our Army. It is not at all suitable for the maintenance
6 of military discipline to leave the matter of punish-
7 ment ambiguous." To this the War Minister replied
8 that "the question of punishment is still under con-
9 sideration. However, the authorities also deem it
10 important to maintain discipline, so please leave the
11 affair to the Army."^a This is another example show-
12 ing that the Privy Councillors were powerless when
13 confronted with Cabinet Ministers in charge.

14 Also in the prosecution's summation it is
15 alleged that in an Extraordinary Meeting of the Council,
16 on or about 17 December 1931, it was decided that the
17 four provinces of Manchuria should be occupied by
18 Japanese troops and for this purpose a budget request
19 was approved.^b We most emphatically deny the truth
20 of this allegation and in addition point out that the
21 evidence cited by the prosecution in support of it^c
22 is the accused ARAKI's answers to the prosecution
23 interrogations and therefore by the ruling of the
24

25 (a. Tr. 15,767; Ex. 2205A
b. Pros. Sum. par. EE-19, p. EE-6
c. Ex. 188-C, Tr. 2219)

1 Tribunal ^a not competent evidence against HIRANUMA. ^b
2 When this ruling was made the prosecution (by Mr.
3 Higgins) definitely stated that they were offering
4 interrogations of this kind only against the accused
5 who made them. We adm't that there was an occasion
6 when the question of expenditures, incidental to the
7 Mukden Incident, was submitted to the Privy Council
8 asking its advice upon the issuance of an emergency
9 Imperial Ordinance, but we contend that there was no
10 occasion in which "it decided that the four provinces
11 of Manchuria should be occupied by Japanese troops."
12 This is an extremely wild allegation made without any
13 evidence to substantiate it.

14 The prosecution also state that HIRANUMA
15 represented Japan on the permanent commission set up
16 under the treaty concluded on 31 October 1935 between
17 Japan and the Netherlands, providing for judicial
18 settlement, arbitration and conciliation of all dis-
19 putes between them. ^c We are at a loss to understand
20 why this event should be charged against him.
21

22 In many paragraphs the prosecution enumerates
23 events which have absolutely nothing to do with the
24 Privy Council or HIRANUMA but refer to such things as

25 (a. Ex. 188-C
b. Tr. 16,103-05; 2782-83; 2797-98
c. Pros. Sum. par. EE-41, p. 15)

1 the Japanese Government's statement breaking off
2 negotiations with the (Chinese) National Government;
3 Mr. Stimson's statement and Japanese Foreign Minister's
4 assurance; the fact that Henry Pu-Yi was induced to
5 accept the position of the Regent of Manchukuo; the
6 installation of Henry Pu-Yi as Emperor of Manchukuo;
7 the issuance of the Amai statement and the denunciation
8 of the Washington Naval Treaty; Amai statement and
9 statements of Mr. Hull and Mr. HIROTA regarding the
10 Amai statement; the denunciation of the Washington
11 Naval Treaty by the Japanese Government; the creation
12 of an oil monopoly in Manchukuo; Japan's refusal to
13 accept the fourteen-inch naval gun limitation; Japan's
14 invasion of China on 7 July 1937; the adoption of the
15 first report by the League of Nations on Japan's
16 military operation in China; Japan's refusal to attend
17 the Brussels Conference; the new formula adopted by
18 Japan vis-a-vis China policy. Establishment of the
19 Provisional Chinese Government in Peking; alleged
20 attack by Japan on the territory of Soviet Union at
21 Lake Khasan and Mt. Zaozernaya; and an issuance of the
22 Japanese Government's official statement concerning
23 the future of East Asia.

25 It is not difficult to guess the reason why
these events were brought up against the Privy Council

1 and HIRANUMA. The prosecution appear to be of opinion
2 that these events involve foreign relations and
3 diplomacy, and, the prosecution asserting that the
4 Privy Council was a Third Chamber with broad super-
5 visory powers over the executive branch in foreign
6 affairs, they evidently believe that these events are
7 within its purview and therefore HIRANUMA should be
8 held responsible for them. As pointed out there is
9 absolutely no evidence whatever to show that the
10 Privy Council had any such power over the executive
11 branch in state affairs either foreign or domestic.
12 There is not one scintilla of evidence to show that
13 the advice of the Privy Council was ever solicited
14 on the matters above referred to. We submit that the
15 prosecution has failed utterly to establish that the
16 Privy Council was a Third Chamber with broad super-
17 visory power over the executive branch in matters
18 both foreign and domestic and that therefore these
19 matters are not properly chargeable against the
20 Council or HIRANUMA.
21

22 PREMIER

23 The prosecution go to great length in attempting
24 to establish the fact that there were seven conditions
25 precedent to former War Minister ITAGAKI's acceptance
of a portfolio in the HIRANUMA cabinet and conclude

1 their argument by saying that "it is readily seen
2 that HIRANUMA and ITAGAKI, together with the Army
3 Senior Chiefs, made a 'deal' upon the terms of the
4 seven conditions." ^a The evidence on which the pros-
5 ecution predicate this allegation is the statement of
6 YAMAWAKI, which even the prosecution admits was flatly
7 contradicted by ITAGAKI. ^b

8 Careful perusal of YAMAWAKI's testimony will
9 reveal that YAMAWAKI never admitted, as alleged by
10 the prosecution, that there were seven such conditions
11 precedent to ITAGAKI's acceptance of the post. All
12 he did state was that he had handed to a Mr. SHIONO
13 certain written conditions for ITAGAKI's acceptance,
14 but he did not remember whether the document contained
15 the points suggested by the prosecutor. ^c Not only that
16 but he also stated that at the time of the formation
17 of the cabinet he was unable to see HIRANUMA. ^d There
18 is no evidence whatever to establish the fact that the
19 document handed to SHIONO ever reached HIRANUMA, much
20 less that its contents did. Exhibit 3303, upon which
21 the prosecution rely is a newspaper article. This
22 article was shown to YAMAWAKI on his cross-examination ^e

24 (a. Pros. Sum. par EE-61, p. EE-20

b. Pros. Sum Par. EE-60, p. EE-20

25 c. Tr. 30,119, 6 Oct. 1947

d. Tr. 30,119, 6 Oct. 1947

e. Tr. 30,118; 30,120; Ex. 3303)

1 although it contains what purports to be the conditions
2 of ITAGAKI's acceptance of the post of War Minister,
3 YAMAMAKI did not recall that the conditions outlined
4 in the document he handed to SHIONO were the same as
5 those appearing in the exhibit. With the many rulings
6 of the Tribunal rejecting and questioning magazines and
7 newspaper articles as evidences we submit that the
8 probative value of exhibit 3303 is nil and cannot
9 refute the statement of ITAGAKI.

10 The prosecution's attack on HIRANUMA's
11 speech in the Diet delivered 21 January 1939, in
12 which he is alleged to have stated in relation to the
13 China policy, that "there was no alternative but to
14 exterminate those who persisted in opposition against
15 Japan" is extremely superficial because the wartime
16 political speeches of any man should not be taken
17 literally much less made the basis of criminal prosecu-
18 tion. The ground of guilt, if any, should be sought
19 with deeper insight, coupled with substantial facts
20 of the prevailing conditions which, from a diplomatic
21 standpoint might demand the position assumed. No
22 speech can collapse an enemy country or kill its people
23 and HIRANUMA's real views and intentions vis-a-vis
24 China can best be found in the intimate talk he had
25 on June 10, 1939 with Wang Ching-Wei. His ambitions,

1 as to the solution of the problem is eloquently dis-
2 closed in his confidential talk with Eugene H. Dooman,
3 United States Charge d'Affair in Tokyo, a faithful
4 description of the interview having been transmitted
5 to the United States Secretary of State in an official
6 letter dated 7 June 1939.

7 In Wang Ching-Wei's interview with Premier
8 HIRANUMA on June 10, 1939, HIRANUMA stated as his
9 opinion that the trouble between Japan and China was
10 indeed alarming and that he wanted to take measures
11 to gain peace by some means or another.^a When Wang
12 suggested three different ways to regain peace and
13 asked HIRANUMA which of these three ways Japan would
14 take HIRANUMA answered that such was a problem of China
15 and that there was no way except to take the measures
16 which China felt to be most proper.^b In the official
17 dispatch to the United States Secretary of State, sent
18 by Mr. Dooman on 7 June 1939, it is disclosed that
19 HIRANUMA told Dooman that^c "the United States and Japan
20 were the only powers which could help to prevent the
21 crystallization of the trend toward the division of
22 Europe into armed camps. There can, however, be no
23 confident hope that a permanent peace can be established
24

25 (a. Tr. 22,262; 15 May 1947
b. Tr. 22,263; 15 May 1947
c. Tr. 29,218; Ex. 3225)

1 until the world-wide economic and political conditions
2 which bring about unrest in Europe and in the Far East
3 can be corrected; and if an international conference
4 can be called to solve the problem which create unrest,
5 Japan would be prepared to agree to the inclusion of
6 the Far Eastern situation among the problems to be
7 discussed. Before any call for such a conference could
8 be issued, Great Britain and France, and Germany and
9 Italy, would have to be sounded out. If the President
10 were prepared to make a confidential approach to the
11 European democracies he (HIRANUMA) would be glad to
12 approach Germany and Italy; and if there returned
13 favorable replies by these nations, he would be glad
14 to have the President call the conference under such
15 conditions as might be agreed upon after discussion
16 through normal diplomatic channels.
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(a. Tr. 29,227-8)

1 It is alleged (EE-66) that the adoption, on
2 January 17, 1939, of a plan for the expansion of pro-
3 ductive power, prepared by the Cabinet Planning Board,
4 was a step taken in preparation of an aggressive war
5 and the prosecution appear to give it great signifi-
6 cance. ^{a.} In their general summation the prosecution
7 state that "the basic plan submitted by the War Minis-
8 try in June 1937, to the various ministries was ulti-
9 mately embodied in Plan IV, the Outline of a Plan for
10 the Expansion of Productive Power, prepared by the
11 Cabinet Planning Board and approved by the Cabinet
12 in January 1939. The preamble outlining the object
13 and policy was in practically the same terms as that
14 in Plan II although the plans differed somewhat in
15 detail." ^{b.} We do not deny that the origin of the plan
16 for the expansion of productive power which was approved
17 by the HIRANUMA Cabinet is a plan which was submitted
18 to the cabinet by the War Ministry in 1937 and that
19 the plan contemplated the year 1941 as the year for
20 the completion of the program. However, the point we
21 desire to stress is that in May and June of 1937 the
22 War Ministry drafted three plans which were referred
23 to in the prosecution's General Summation as Plans I,
24
25 (a. Pros. Summation para. EE-66, p. EE-23)
(b. Pros. Summation para. F-5, p. F-5)

1 II and III.^{a.} However, the plan adopted by the HIRANUMA
2 Cabinet is only one of them and is the one designated
3 as Plan I. The prosecution allege that the three
4 plans are inseparable and treats them as such and
5 therefore accuse the HIRANUMA Cabinet with preparations
6 for aggressive war.

7 However, let us discuss these plans separately
8 and see whether the prosecution's argument is well
9 grounded in the evidence. Plan I, is entitled "Essen-
10 tials of Five Year Program of Important Industries,"
11 prepared by War Ministry, dated 29 May 1937; Plan II
12 is entitled "Resume of Policy Relating to Execution of
13 Essentials of Five Year Program of Important Industries,"
14 trial draft prepared by the army dated 10 June 1937
15 and dealt with the materials required by Plan I;
16 Plan III is entitled an "Outline of the Five Year Plan
17 for the Production of War Materials" and was formulated
18 by the War Ministry on 23 June 1938.^{d.}

19 According to witness OKADA, Kikuseburo, it is
20 quite clear that Plan I was submitted to the cabinet
21 29 May 1937 on or about the day it was formulated.^{e.}

22 Plan II was tentative and was not officially submitted

23
24 (a. Pros. Summation para. F-2-3-4, pp. F-2-3-4*
25 (b. T. 8269, Ex. 842)
(c. T. 8269, Ex. 842)
(d. T. 8260, Ex. 841)
(e. T. 18309, 13 March 1947)

1 to the cabinet and its purpose was for reference in
2 connection with Plan I;^{a.} and it was Plan I which became
3 the basis of the plan formulated by the Planning Board
4 of the HIKANUMA Cabinet in 1939.^{b.}

5 The fact that the Plan III was never sub-
6 mitted to the cabinet is evidenced not only by the
7 testimony of witness OKADA^{c.} and was not said to have
8 been by the prosecution witness Liebert.^{d.} The document
9 containing Plan III is marked at the top "Military
10 Secret"^{e.} and was found in the archives of the War Office.^{f.}
11 Witness OKADA pointed out that paragraph 4 of Plan III
12 which read in part "this outline shall depend firstly
13 on the basis of fixed war budget"^{g.} meant that the plan
14 was based on the amount of the budget which the army
15 expected to be able to secure during the years 1937
16 through 1943.^{h.} He further stated that two weeks after
17 June 23, when War Minister SUGIYAMA's approval was
18 given, the Lukuochiao Incident suddenly broke out on
19 July 7, and that Plan III was impossible to carry out
20 in detail.^{i.}

22 (a. T. 18309-10-11)

23 (b. T. 18310: 13 March 1947)

24 (c. T. 18310-11)

(d. T. 8584)

(e. T. 18283)

(f. T. 8584)

25 (g. T. 18325; 18285)

(h. T. 18284)

(i. T. 18283)

OKADA also testified that Plan III died a
1 natural death because of the sudden outbreak of the
2 China Incident.^{a.} The prosecution, ignoring this tes-
3 timony, part of which was given by its own witness
4 Liebert, and giving no regard to the fact that Plan III
5 was never taken up by the cabinet, proceed to state
6 that "if there could be any doubt that the two previous
7 plans were aimed at mobilizing Japan for war, it was
8 dispelled by Plan III.^{b.} They further allege that these
9 three plans are inseparably interrelated and therefore
10 all of them are Japan's preparation for an aggressive
11 war.^{c.}
12

13 However, for the purpose of the individual
14 defense of HIRANUMA it will be sufficient to point
15 out that Plan III was never submitted to the cabinet
16 and was therefore unknown to HIRANUMA. We can rely
17 on this issue on the above references to the testimony
18 of Liebert and OKADA. Assuming that in the minds of
19 the planners in the War Ministry in 1937, these three
20 plans were created as interrelated plans; this fact
21 was not made known to the HIRANUMA Cabinet of 1939;
22 they knew nothing of the Plan III and Plan I is in
23 itself a self-sufficient program and would arouse no
24

25 (a. T. 18278)

(b. Pros. Summation para. F-4 p-4)

(c. Pros. Summation F-6, p-6)

1 suspicion of additional plans. We submit that the
2 prosecution's theory to the effect that the plan
3 adopted by the HIRANUMA Cabinet in 1939 included within
4 its scope the third plan drafted by the War Ministry
5 on 23 June 1937 and their further theory that the
6 plan adopted by the HIRANUMA Cabinet embraced the sub-
7 stance of the three plans drafted by the War Ministry
8 is wholly untenable.^{a.}

9 The prosecution is apparently of the opinion
10 that the War Ministry Plan I, of 1937, upon which
11 the plan of the HIRANUMA Cabinet was predicated,
12 standing alone, still is of an aggressive nature. We
13 submit that such a conclusion has no basis in fact
14 and the whole of the evidence precludes such an inter-
15 pretation. OKADA testified that exhibit 841 (Plan III)
16 is entirely concerned with the military and that exhibit
17 842 (Plan I) while it has a good deal of military as-
18 pects in it is essentially a plan for the establishment
19 of a peace time economy^{b.} and that at such time Japan
20 was in a position where she had to beware of, and to
21 take measures to cope with the phenomenal expansion
22 in the military power of Soviet Russia;^{c.} and that in
23 drawing up her plans she kept in mind the Soviet's
24

25 (a. Pros. Summation para. EE-67, p. EE-23)

(b. T. 18273)

(c. T. 18273)

1 third five year plan, i.e., the termination period
2 of the third five year plan. In paragraph C of "the
3 Basic Policy" of the Plan approved by the HIRANUMA
4 Cabinet it is stated that "this plan aims at the es-
5 tablishment of self-sufficiency in regard to important
6 resources within the sphere of our influence and there-
7 by avoid depending on the resources of a third power as
8 far as possible even in time of emergency."^{b.}

9 OKADA pointed out that the part of exhibit
10 842 (Plan I) wherein it is stated "try not to depend
11 as much as possible on outside supplies" meant that
12 even in war time it was expected that the import of
13 necessary war materials would be continued, but Japan
14 should avoid depending on import as much as possible,
15 and, at that time, Japan relied, and would have to
16 continue to rely, for its supply of these materials on
17 the Anglo-Saxon bloc.^{c.} This indicates clearly that
18 the Plan did not contemplate a war with the United
19 States and Britain. Witness Liebert, in the opening
20 paragraph of his survey states that "Preparation for
21 war is disclosed in great measure by direct examination
22 of the trends of raw material supply and industrial
23 production. Enormous amount of equipment of various
24

25 (a. T. 18277)
(b. T. 8270)
(c. T. 18325)

sorts are necessary to the conduct of modern warfare." ^{e.}

1 This seems to indicate that he is of the opinion that
2 the purport of the provisions of the plans under dis-
3 cussion are war preparation plans. However, on cross-
4 examination he admitted that he could not recall any
5 words in any of the documents which he had presented
6 to show that the plan was for preparation for war
7 against America. ^{b.} He also admitted that he was not
8 familiar with the details of the Soviet Plan and that ^{c.} that
9 he had not studied the increase of industry in coun-
10 tries other than Japan. ^{d.} He further said that he did
11 not recall that he ever stated that this plan was in
12 preparation for aggressive warfare. ^{e.}

14 THE PRESIDENT: Well, you are coming to a new
15 paragraph. We will adjourn until half past one.

16 (Whereupon, at 1200, a recess was
17 taken.)

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20
21 (a. T. 8260)
22 (b. T. 8660)
23 (c. T. 8659)
24 (d. T. 8574)
25 (e. T. 8769)

AFTERNOON SESSION

1
2
3 The Tribunal met, pursuant to recess, at 1330.
4
5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Captain Kraft.

8 LANGUAGE ARBITER (Captain Kraft): If the
9 Tribunal please, the following language correction is
10 submitted:

11 Exhibit No. 3367-A. Delete lines 28-33
12 and substitute:

13 "As regards the subject of your inquiry
14 in "JO"-3, Secret No. 692. Since it is the Imperial
15 policy not to permit visits by agents of the protect-
16 ing power of enemy countries to prisoners of war and
17 to internees in occupied areas, and the adjoining
18 operational areas, reply should be made accordingly
19 to the Swiss Minister."

20 THE PRESIDENT: Colonel Warren.

21 MR. WARREN: In the face of the evidence of
22 both the prosecution and defense, the contention of
23 the prosecution that Plan I of 1937, and the HIRANUMA
24 cabinet plan of 1939 was a preparation for aggressive
25 war is wholly untenable and not supported by the evi-
dence. The prosecution appear to believe that the gap

1 in its reasoning, caused by absence of evidence, can
2 be bridged over by the fact that Japan did wage war
3 against the United States and Great Britain in 1941.
4 We have pointed out that Liebert testified that he
5 could not recall the words to show that the plan was
6 for preparation of war against America but he quali-
7 fies his testimony by saying, "I have tried to point
8 out a general preparation for war and I can only --
9 I only know what happened as a matter of history."^{a.}
10 He appeared to be completely bewildered and it is plain
11 that the witness was attempting to rationalize his
12 testimony. We have, of course, repeated assurances
13 by the Tribunal that it will never allow Liebert's
14 testimony to encroach upon the scope of its own province
15 but we are greatly concerned with the prosecution's
16 reasoning that lack of evidence upon which to judge
17 the state of mind of an accused in 1939 can be compen-
18 sated for by occurrences in 1941, especially as in the
19 case of HIRANUMA who was in the government in the
20 former year but not in the latter.

22 An outstanding example of the rationalization
23 of the evidence by the prosecution appears in its
24 general summation. They state in substance that
25 "OKADA," however, did state that the plan was prompted
a. T. 8660.

1 by fear of Russia." ^{a.} but that "it is still more
2 noteworthy that when the time came to attack, Japan
3 did not attack the Soviet, but continued her aggres-
4 sion in China and attacked Britain and the United
5 States, the two major obstacles to the fulfilment
6 of her objectives in China and the South Seas," ^{b.}
7 and that "it is quite impossible to see how the fact
8 that the objectives of a plan fail to be achieved can
9 change a warlike plan into a peaceful one." ^{c.} This
10 kind of reasoning is wrong and it does not serve to
11 establish the allegations of the prosecution. The
12 fact that Japan did not wage war against Soviet Russia
13 is no test as to whether the plan in question was or
14 was not directed to the defense of possible attack
15 from Russia. The fact that Japan waged war against
16 the United States and Great Britain and utilized cer-
17 tain preparations made under a plan does not make that
18 plan, if it were originally prepared for other pur-
19 poses, a plan of aggression against United States and
20 Great Britain. Unless the original planners had a
21 guilty knowledge of any intended subsequent diversion
22 of the plan to other uses they would not be bound. It
23 cannot be said that the manufacturer of a sporting gun
24

25 a. Pros. Sum. par. F-7, p. F-7.

b. Pros. Sum. par. F-7, p. F-8.

c. Pros. Sum. par. F-8, p. F-9.

1 could be held for murder simply because a subsequent
2 owner used it for that purpose. Of course the fact
3 that the objective of a plan failed to be achieved
4 could not change a warlike plan into a peaceful one,
5 but can the outbreak of war years later change a
6 peaceful plan into a warlike one? The prosecution
7 accuse us of talking "outright nonsense,"^{a.} but we
8 still insist that the only question is whether or not
9 there is evidence to show that the program approved
10 by the HIRANUMA Cabinet in 1939, taken as it was, was
11 a preparation for an aggressive war. We submit that
12 there is no such evidence and prosecution's view in
13 attempting to rationalize the issue is outright non-
14 sense.

15
16 The prosecution in addition to the plan for
17 important industries adopted by the HIRANUMA Cabinet
18 refer to the following events and alleges they are all
19 preparations for aggressive warfare in line with the
20 plan discussed in foregoing paragraphs.

- 21 1. Organization of national policy companies.
- 22 2. Compulsory purchases of gold.
- 23 3. Pronulgateion of the Shipbuilding Industry

24 Law.

25 a. Pros. Sum. par. F-8, p. F-10.

1 4. Issuance of an Ordinance concerning the
2 Plan by the Promoter of a business.

3 5. Promulgation of the Coal Sales Control
4 Regulations.

5 6. The increase of military and navy budget.

6 7. Increase of standing army.

7 8. Institution of compulsory youth training
8 school.^{a.}

9 It may be right to say that some of these
10 plans were put into force for the purpose of meeting
11 demands arising out of the China Incident but it is
12 quite wrong to assert they were preparations for an
13 aggressive war against the United States and Great
14 Britain. Any argument in answer to these charges
15 would be similar to that presented in dealing with
16 the plan for the expansion of the important industries
17 and we will therefore not argue these particular
18 charges further.
19

20 The most important problem which HIRANUMA
21 had to deal with as Premier was the question of in-
22 tensifying the Axis relationship. The negotiation
23 for strengthening the relation between Japan and
24 Germany was first suggested by Germany in January

25 a. Pros. Sum. pars. EE-72 through EE-78;
par. EE-81.

1 1938.^{a.} It was terminated near the end of the
2 HIRANUMA Cabinet without fruitful results.^{b.} Never-
3 theless, the prosecution take the view that it was,
4 on the part of Japan, a preparation for the Pacific
5 war and that it was a part of the conspiracy between
6 Japan and the European Axis Powers to dominate the
7 world. We shall first point out that Japan, taken
8 as a whole, or as a country represented by the
9 HIRANUMA Cabinet, never during that period had a
10 relationship with the Axis Powers which could be
11 called conspiracy. Actually, the relation between
12 Japan and the Axis Powers was not that of co-conspira-
13 tors but on the contrary was a relationship full of
14 mutual mistrust and actual betrayal on Germany's part.
15 Next, we will refer to the discord between the political
16 factions in Japan, one favoring Axis Alliance and the
17 other opposing it; at the same time we will make
18 reference to the attitude of HIRANUMA. Finally, we
19 shall briefly deal with the question of the relations
20 between the Axis Powers after the termination of the
21 negotiations.
22

23 The alliance which Germany desired to con-
24 clude was an all-out military pact against the world
25

a. Ex. 497, T. 6051-2.
b. Ex. 2744, T. 24401.

1 whereas the only alliance which the HIRANUMA Cabinet
2 was willing to conclude was one mainly directed against
3 the Soviet Union. As a result there was a serious
4 rift between the intentions of both countries which is
5 very clearly demonstrated by the testimony of the
6 witness KAWABE,^{a.} and in exhibit 502, which is a
7 telegram from Ribbentrop to the German Ambassador in
8 Tokyo dated 26 April 1939.^{b.} According to the witness
9 Stahmer, Japan "towards the end of 1938 and especially
10 after the change of the Japanese Cabinet from KONOYE
11 to HIRANUMA^{c.} early in 1939, Japan was slowing down the
12 negotiations and Germany got the impression that the
13 administration in Japan was not seriously interested
14 in a closer relation with Germany and Italy."^{c.}

15
16 An entry in the Ciano diary dated 6 March
17 1939 reads "News from Berlin confirms that the
18 Japanese Government objects to the signing of a
19 Tripartite Pact. . . Is it really possible to involve
20 distant Japan deeply in European political life which
21 is becoming increasingly complicated and uncertain and
22 which is subject to change from one moment to the next
23 by a simple telephone call."^{d.} In an entry on the

- 24 a. T. 33775-6-8-9.
25 b. T. 6100.
c. T. 24398.
d. T. 6096, Ex. 501.

1 following day it is stated that, ". . . The delay and
2 the entire Japanese procedure make me very skeptical
3 of the possibility of an effective collaboration of
4 Fascist and Nazi dynamism with the phlegmatic slow-
5 ness of the Japanese."^{a.} Other evidence to show that
6 there existed mutual distrust between the two coun-
7 tries is a passage in an article written by SHIRATORI.
8 In this article entitled "The European War and the
9 Attitude of Japan," SHIRATORI states, ". . . Before
10 I went abroad, I observed, a rather widespread feeling
11 among the people that it would, therefore, be well
12 if this Anti-Comintern relationship were further
13 developed into a military alliance. . . Japan, however,
14 seemed to be for the settlement of the China Incident
15 by cooperating with Britain. Such being the attitude
16 of Japan, Germany and Italy began to mistrust Japan
17 on this point and, finally giving up Japan went as
18 far as the Russo-German Nonaggression Pact. . . I can
19 affirm here the indisputable fact Japan also was
20 perhaps responsible and should indulge in intro-
21 spection for the course which led to conclusion of
22 the Russian German Nonaggression Pact."^{b.}
23

24 Exhibit 3226, an affidavit of Major-General

25 a. T. 6097, Ex. 501.
b. T. 16037, 16038.

1 Piggott of the British Army, reveals how HIRANUMA in
2 June 1939 succeeded in solving the Tientsin Incident
3 to the satisfaction of the British Government and the
4 Japanese Army.^{a.}

5 This success of HIRANUMA in restoring a
6 cordial relation between Japan and Great Britain and
7 his proposal made to the United States Government
8 through the Charge d'Affaires of the United States
9 Embassy in Tokyo urging cooperation between Japan
10 and the United States to prevent the division of
11 Europe into armed camps and at the same time offering
12 to submit to an international conference the conflict
13 between Japan and China^{b.} are two outstanding events
14 which disclose the policy of HIRANUMA towards the
15 United States and Great Britain. We submit that the
16 attitude of Japan which led Germany and Italy to mis-
17 trust her, as stated by SHIRATORI, and drove Germany to
18 side with Russia was an attitude taken by HIRANUMA.
19 Witness Stahner testified that "The negotiations were
20 completely broken off when the nonaggression pact
21 between Germany and Soviet Russia was concluded on
22 23 August 1939. The German-Russian negotiation result-
23 ing in this pact was kept secret from the Japanese."^{c.}

25 a. T. 29233.
b. T. 29227.
c. T. 24401.

1 The evidence shows that from the beginning
2 of the Japan-German negotiations under the HIRANUMA
3 Cabinet the intentions of the two governments were
4 fundamentally divergent and the Japanese Government as
5 represented by the HIRANUMA Cabinet was not trusted
6 by either Germany or Italy and that Germany simultan-
7 eously had been secretly conducting negotiations with
8 the Soviet Union which finally resulted in concluding
9 the nonaggression pact which caused the downfall of
10 the HIRANUMA Cabinet.
11

12 The fact that there existed conflict of opinion
13 in the HIRANUMA Cabinet as to the advisability of Japan's
14 entering into an alliance of the type proposed by Ger-
15 many is fully admitted by the prosecution.^{a.}

16 As to the attitude of HIRANUMA to the con-
17 flicting factions it is noteworthy that the prosecu-
18 tion in their reply to the defense motion to dismiss
19 the Indictment stated that "He seems to have wanted
20 the alliance to be directed mainly against Russia"^{b.}
21 and in their general summation refer to others of the
22 accused as the champions of the faction favoring mili-
23 tary alliance.^{c.} Extracts from the HARADA diary were
24 introduced in an attempt to establish HIRANUMA's
25

a. Pros. Sum. par. EE-86, EE-29.

b. T. 16842, 30 Jan. 1947.

c. Pros. Sum. par. F-124, p. 117.

1 intentions but we submit that his true intention is
2 best disclosed in his talk to Eugene Doonan, a fair
3 description of which was transmitted in an official
4 letter to the United States Secretary of State on
5 6 June 1939 and reads in part as follows: "Baron
6 HIRANUMA said that the belief was widely held abroad
7 that Japan was considering a military alliance with
8 Germany and Italy. He had endeavored to explain frankly
9 the basis of Japanese sympathy for Germany and Italy,
10 and he could say quite definitely that the basis of
11 what appeared to be a concerting of Japanese policy
12 with that of Germany and Italy lay in the fact that
13 all three countries were in the same economic strategic
14 position. He personally was of the opinion that Japan,
15 whose government would for all time to come rest on
16 the sanctity of the Imperial Family, could not tie
17 itself by special relations to any foreign government
18 whose stability depended on the continued existence
19 and political prestige of one individual."^a

21 The prosecution made a remark to the effect
22 that the negotiations for the military pact were
23 conducted through military channels, and that the
24 Japanese Army was strong enough to enforce its will
25 upon the Japanese Government ^b and OSHIMA in his

a. T.29226; 24 Sept. 1947; b. T. 5916; 19 Sept. 1946.

1 interrogation states, ". . . the army (Japanese) had
2 enough power to very probably sell the pact to the
3 Japanese Government. . . I would say that no treaty
4 could possibly have been made on this if the army had
5 not wished it."^{a.}

6 We submit that the attitude of HIRANUMA is
7 most eloquently expressed by the fact that in spite
8 of the pressure of Germany and of the pro-German
9 faction in Japan the HIRANUMA Cabinet still did not
10 approve an alliance of the type urged by them even
11 after constant deliberation throughout the lifetime of
12 the cabinet and in more than seventy sessions of the
13 Five Ministers' Conference where it was discussed.^{b.}
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a. T. 5918.

b. Pros. Sum. par. EE-87, p. 29.

1 The prosecution's interpretation of the
2 HIRANUMA message of 4 May 1939 is, in our submission,
3 erroneous. The prosecution describe it as "an
4 acceptance of an unlimited alliance with certain reser-
5 vations."^c

6 But, those certain reservations as admitted
7 by the prosecution are stated as follows: " * * * how-
8 ever Japan is, in view of the situation in which it
9 now finds itself, neither presently nor in ~~the~~ near
10 future able to extend to them in a practical manner
11 any effective military aid."^d

12 This certainly would be a big loophole in an
13 agreement for unlimited alliance and it must have been
14 very clear to the astute German politicians that any
15 military aid promised by Japan thereunder was nothing
16 but lip service. No wonder they hastened to conclude
17 a non-aggression pact with Soviet Russia.

18 The prosecution allege that even after the
19 termination of the negotiations, the pro-German faction
20 in Japan continued to endeavor to realize rapprochement
21 between the two countries. However, as previously
22 stated HIRANUMA resigned the post of Premier and
23 remained out of office until December 1940, and had
24
25

c. Pros. Sum. par. EE-87, p. 30.

d. Pros. Sum. par. EE-87, p. 31.

1 nothing to do with that situation and there is not one
2 single line of evidence to show that HIRANUMA was a
3 member of that faction. As far as HIRANUMA was concerned
4 the conclusion of the non-aggression pact by Germany
5 with Soviet Russia definitely ended whatever relations
6 existed between Japan and Germany. A vigorous protest
7 was sent to Germany by the Foreign Minister of the
8 HIRANUMA cabinet stating that "The Japanese Government
9 had interpreted the conclusion of the Non-Aggression
10 Pact as finally terminating the present negotiations
11 between Japan and Germany for a Tripartite Pact with
12 Italy."^a
13

14 Regarding the charge made against HIRANUMA
15 in connection with the alleged increase of opium
16 production in areas supposed to have been under Japanese
17 control,^a we should like to point out that the prosecu-
18 tion, in support of the charge, did not cite one single
19 instance of any decision made or any action taken by
20 the HIRANUMA cabinet with regard to the situation.
21 Hence we will not argue the question here because there
22 is nothing to argue.

23 The occupation of the Island of Hainan, which
24 is charged against HIRANUMA in the prosecution
25

a. T. 6123.

a. Pros. Sum. par. EE-58, p. EE-19.

b
1 summation, was decided by the Navy General Staff some-
2 time in November 1938, nearly two months before the
3 assumption of the post of Premier by HIRANUMA. Witness
4 KONDO testified that "The operation of occupying Hainan
5 Island was planned while I was, as above mentioned,
6 in the position of the Chief of the First Department
7 of the Navy General Staff (around November 1938),"^a
8 and that "the Hainan Island Operation was based upon
9 an order 'Occupy Hainan Island' which was issued by
10 the Imperial Headquarters in January 1939 and was car-
11 ried out in the form of a joint operation by the navy
12 and army."^d

14 The occupation of Hainan Islands was made
15 exclusively on the basis of purely strategic require-
16 ments."^a The relation between the cabinet and the
17 Supreme Command in Japan is very explicitly set forth
18 in the prosecution summation. They state, in substance,
19 that the Supreme Command was independent of the govern-
20 ment in its own sphere and was entitled to participate
21 in all important policy decisions along with the
22 government. They further state that the Supreme Com-
23 mand became so strong that, as stated by TOJO, Japan
24

25 b. Pros. Sum. par. EE-79, p. EE-27.

c. Tr. 26,864; Ex. 3014.

d. Tr. 26,866.

a. Tr. 26,867.

1 had no political organ which could restrain the High
2 Command from plunging the nation into hostilities;
3 but they further allege that it should be noted that
4 while there was no organ of control, the government did
5 have power to control expenditures.^b We concur fully
6 in this particular view. The only control the govern-
7 ment had over the Supreme Command was its control over
8 the budget and it can be readily seen that in a case
9 such as the occupation of Hainan Island, which was a
10 matter of pure strategy and was decided by the Supreme
11 Command in 1938, before the HIRANUMA cabinet was formed,
12 that HIRANUMA could not possibly have had anything
13 to do with it even though the actual operational order
14 was given in January; the month of his acceptance of
15 the portfolio.^a In any event the HIRANUMA cabinet had
16 no authority to act on any operational matter; except,
17 in case of an emergency military budget to defray the
18 expenses of such an operation, and since this had already
19 been done in November preceding the formation of the
20 cabinet in January of the following year, and since
21 the military already had the money, we submit that the
22 prosecution has no grounds upon which to charge the
23 occupation of Hainan Island to HIRANUMA.
24
25

b. Pros. Sum. par. K-15, p. 16.

a. Tr. 26,866.

1 The general defense summation on the so-called
2 Nomonhan Incident is sufficient to refute the allega-
3 tion of the prosecution that it was a case of Japanese
4 violation of the Mongolian People's Republic and we
5 will not discuss it here except to draw the Tribunal's
6 attention to part of HIRANUMA's answers to the
7 prosecution's interrogations. His answers demonstrate,
8 among other things, that in this case also the army
9 acted independently of the government; that HIRANUMA
10 knew nothing about it at the time of outbreak of
11 hostilities and that as the Supreme Command of the army
12 was not controlled by the government, HIRANUMA could
13 not give orders for cessation of the hostilities. All
14 he could do was express, to the War Minister, his
15 views on the necessity of ceasing hostilities and this
16 he did do. They also demonstrate that HIRANUMA's
17 opinion was that all disputes should be settled by
18 peaceful negotiation and not by way of military opera-
19 tions.
20 ^a

21 The attitude of HIRANUMA toward Wang Ching-wei
22 and his peace movement is most eloquently disclosed
23 in HIRANUMA's interview with Wang held on 10 June
24 1939. The gist of that conversation has already been
25 cited.
26 ^b

a. Tr. 7855-6.

b. Tr. 22,262.

1 Government was a government established by the free
2 will of members of the Chinese Nationalist party has
3 been fully discussed in the China phase of the defense
4 summation and we have nothing to add at this time.

5 The activities of the Japanese Air Force,
6 during the time when HIRANUMA was Premier, is a matter
7 for the Supreme Command as we have already shown by
8 our previous argument, and we have nothing to add to
9 the general summation of the defense on that phase.

10 STATE MINISTER.

11 HIRANUMA joined the Second KONOYE Cabinet on
12 6 December 1940, as a minister without portfolio nearly
13 five months after its inauguration on 17 July 1940.
14 Soon after joining the cabinet he assumed the post of
15 Home Minister and following the resignation of the
16 Second KONOYE Cabinet resumed the post of the minister
17 without portfolio in the Third KONOYE Cabinet. However,
18 owing to injuries sustained by him on 14 August 1941,
19 on the occasion of an attempt of a group of lawless
20 rightists to assassinate him,^a he was incapacitated
21 from attending official duties until 29 November 1941.^b
22 HIRANUMA's life was again endangered by an attack of
23 a gang of about forty men comprised mostly of soldiers
24

25 a. Tr. 30,948, Ex. 3340.

b. Pros. Sum. par. EE-123, p. EE-42, 43.

and students. ^c This occurred on 15 August 1945
1 immediately after he had attended a meeting in which
2 it was definitely decided to accept the terms of the
3 Potsdam Declaration. The gang was led by an army
4 captain named SASAKI, who shouted that HIRANUMA was
5 a notorious leader of the pro-Anglo-American group. ^a
6 According to the testimony of KIDO, based upon an
7 entry in his diary under date of 31 May 1937, HIRANUMA
8 was of the opinion that it was preferable to have the
9 then Imperial Household Minister, MATSUDAIRA, named
10 as Premier because the political situation was such
11 at that time that it was necessary to coalesce with
12 Great Britain in international relations. ^b This
13 evidence shows that HIRANUMA had always entertained a
14 pro-Anglo-American feeling and was known as the leader
15 of the pro-Anglo-American faction in the country.
16 His policy to retain cordial relation with the British
17 Commonwealth and to cooperate with the United States
18 in world politics is also clearly demonstrated in the
19 previously discussed affidavit of Major General Piggott
20 (DT29229) and Mr. Dorman's letter (ET29228).
21
22

23 Whatever policy the 2d and 3d KONOYE cabinet
24 is alleged to have pursued, the fact remains that their

25 c. Tr. 29,322-26; Ex. 3231.

a. Tr. 29,323; Ex. 3231.

b. Tr. 31,250-51.

1 life depended upon the question of negotiations between
2 the United States and Japan. According to the defense
3 witness MITARAI, the resignation of the 2d KONOYE cabinet
4 was decided upon in order to bring about the resignation
5 of Foreign Minister MATSUOKA and to reshuffle the entire
6 cabinet. MATSUOKA's resignation was considered neces-
7 sary if the purpose of carrying out Japan's negotiations
8 with the United States was to run smoothly and
9 effectively.^a The 3d KONOYE cabinet according to the
10 prosecution's citation did fall because the army desired
11 to go to war, and KONOYE felt that the negotiations could
12 be successful; however, he was unable to convince the
13 opposition.^b

14 Even in the middle of the disruption of the
15 KONOYE cabinets, HIRANUMA's firm belief in peaceful
16 settlement of international conflicts never wavered.
17 As is shown by the interrogations taken from him by
18 the prosecution it was not a mere simple matter of
19 being pro-British or pro-American. He basically was
20 opposed to power politics and was convinced that dis-
21 putes should be settled by negotiations and not by
22 arms.^c SAITO, Yoshie, testified how HIRANUMA, in a
23 cabinet meeting in May 1941, when KONOYE, MATSUOKA and
24

25 a. Tr. 17,796-7.

b. Procs. Sum. par. G-112, p. G-104.

c. Tr. 7856.

1 other ministers were present, made a speech in which
2 he stated that Japan must not fight for any reason what-
3 soever. In this speech HIRANUMA gave his reasons and
4 stated that if a war started between big powers, it was
5 not only highly probable, but almost inevitable that
6 such a war would develop into a world-wide conflagration
7 and the human race would be thrown into misery.^a

8 The prosecution state that "In the new cabinet
9 formed by TOJO there was no place for those who wished
10 to go forward with the conspiracy by negotiation, and
11 thus KONOYE, TOYODA, OIKAWA and HIRANUMA were dropped."^b
12 Well, it just so happens that these accused are charged
13 with carrying on a conspiracy to wage aggressive war,
14 and with actually engaging in aggressive war as a result
15 of this conspiracy. We should like the prosecution to
16 answer two problems for us which we frankly admit we
17 cannot solve. One is, how can a conspiracy to wage
18 aggressive war be carried on by negotiations when
19 such negotiations are aimed at peace with the very
20 nation that is marked as the victim of the conspiracy?
21 The second is, assuming for the sake of argument the
22 absurd position that such a conspiracy could be carried
23 on to its ultimate fulfillment, how are you going to
24 wage an aggressive war by negotiation?
25

a. Tr. 29,243.

b. Pros. Sum., par. G-115, p. G-106.

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1 The prosecution admit, in effect, what we
2 believe we have already established and that is the
3 fact that HIRANUMA was never in such a conspiracy.
4 We thank the prosecution for its fairness in admitting
5 that HIRANUMA did not go along with the war cabinet
6 and was therefore dropped from the conspiracy. At
7 the very least the statement of the prosecution is an
8 admission that HIRANUMA was against the policy of
9 solving the pending problem by force of arms.

10 It seems that it is a favorite argument of
11 the prosecution to say that because a man did not
12 resign his post in a cabinet, even though he continued
13 to oppose its policy, that he should none the less
14 be held liable for the policy of the cabinet and share
15 its responsibility. If this man stayed in the cabinet
16 because he believed that only by doing so he can
17 stop the country from plunging into war, is it fair to
18 charge him with responsibility for the war? Does not
19 his state of mind count? HIRANUMA stayed in the KONOYE
20 Cabinet because he believed it was his duty to stop
21 war yet the prosecution accuse him with the alleged
22 conspiracy for aggressive war because, in the KONOYE
23 cabinet, certain policies were adopted in spite of
24 his opposition. HIRANUMA was dropped because there
25 was no room for him in the war cabinet, but the

1 prosecution still attempt to hold him responsible by
2 a negotiation conspiracy, whatever that is.

3 Numerous policies and decisions adopted by
4 the 2nd and 3rd KONOYE Cabinets, which are charged
5 against HIRANUMA, are subjects of the general summation
6 and therefore we will confine ourselves to answering
7 the charge made in connection with the manufacture of
8 military currency notes (a). Prosecution's Exhibit
9 852, a Japanese Government Document, clearly shows
10 that this matter was treated as a "military secret"(b)
11 and that the procedure of the issuance of military
12 currency notes was conducted by the Premier, Army, Navy
13 and Finance Ministers (c), HIRANUMA, who was then the
14 Home Minister, had nothing to do with it.

15 SENIOR STATESMAN

16 The prosecution, in presenting its version
17 of what occurred in the Senior Statesmen's meeting
18 of November 29, 1941, relies on the testimony of the
19 accused TOJO instead of the witness OKADA, Keisuke.
20 This is surprising because this same witness had also
21 been used by the prosecution on another highly
22 important phase of the case. It was during the cross-
23 examination of this witness that the Chief Prosecutor,
24

- 25 (a) Pros. Sum., par. EE-106, pp. 36-37.
(b) T. 8,452.
(c) T. 8,458.

Mr. Keenan, told the Court, "Your Honor, I state that
1 the prosecution has great respect and confidence in
2 (a)
3 this witness."

4 It is noteworthy that this remark regarding
5 OKADA was made shortly after his testimony in chief
6 concerning the Senior Statesmen's meeting of 29
7 November 1941 and during cross-examination on that
8 very subject. There is no denying that the Chief
9 Prosecutor respected and believed every word of his
10 testimony. It is no wonder that we now think it
11 strange that in the prosecution summation of the HIRANUMA
12 case the confidence in OKADA has suddenly waned and
13 every word of TOJO which contradicts OKADA is cited
14 as their ground for condemning HIRANUMA. We submit
15 that OKADA's testimony is true and that the prosecution
16 have estopped themselves from denying it.

17 According to OKADA, what happened in the
18 meeting of the Senior Statesmen held on 29 November
19 1941 is as follows:

20 "The Premier did not state that the Government
21 had decided at that time to go to war and the members
22 of the Government did not attempt to persuade us in
23 support of war. However, each Elder Statesman asked
24 questions of the Ministers who were present. To the
25 (a) T. 29,301.

1 questions, they replied that the position of the
2 Government would be well understood if the factual
3 grounds were shown and if they could disclose and cite
4 figures which they had, but which they stated they
5 could not disclose since they were State secrets.
6 None of the Elder Statesmen supported or encouraged
7 war, especially WAKATSUKI, KONOYE, HIRANUMA and I.
8 Without any previous consultation or deliberation, we
9 urged the Government to reconsider the matter very
10 carefully and to proceed with extreme caution in
11 any matter which might bring about hostilities. We
12 all expressed negative opinion. *** Inasmuch as we
13 were not told that the Government had decided upon
14 war, and as we were not informed of the grounds which
15 were based upon the figures which the members of the
16 Government told us were being treated as State secrets,
17 we had no opportunity to go into the matter deeply.
18 Because of lack of exact information, which was withheld
19 from us for the reason mentioned, we had to confine
20 ourselves to the expression of negative and dissuading
21 opinions. *** I warned that the country must not be
22 driven to a sudden crash, which, in my opinion, would
23 be far worse than the slow strangulation which the
24 Premier feared. This opinion was concurred in completely
25 by Baron HIRANUMA. *** The great majority of us,

1 including Baron HIRANUMA, were not satisfied with the
2 explanation given by the Government authorities and
3 having deep concern for the future welfare of the
4 nation, we stated that the Government must handle
5 the matter with utmost caution***we parted with absolutely
6 no premonition that within less than ten days the
7 attack on Pearl Harbor would have been made." (a)

8 Upon cross-examination by the Chief Prosecutor,
9 it was brought out that in the meeting of November 29th
10 the Senior Statesmen earnestly and persistently
11 sought information from the Cabinet upon which they
12 could base a judgment so that intelligent advice could
13 be given to the Emperor, but that such information
14 was refused on the ground that the matters concerned
15 were state secrets. (a) It was also brought out that
16 the Senior Statesmen wished to know very badly whether
17 it was the intention of the Government to strike immedi-
18 ately at America, Great Britain and the Netherlands
19 by way of actual war, but this they were not told
20 either. (b) The Court was also told that what the
21 witness OKADA meant by saying "expressed negative or
22 dissuasive opinion" was that having received no
23 worthwhile information from the Prime Minister, the
24

25 (-) T. 29,260-1-2; 29,290

(a) T. 29,279-80

(b) T. 29,285

1 Senior Statesmen could not give the Emperor much
2 worthwhile advice, but just told the Emperor they
3 were very worried about the fact. (c) It was further
4 revealed on cross-examination that if the Senior
5 Statesmen had known that the fleet was on its way to
6 Pearl Harbor definitely, they would have vehemently
7 urged the Emperor to make every effort to avoid this
8 opening of the war. (d)

9 As a result of the cross-examination by Dr.
10 KIYOSE, appearing for the accused TOJO, certain issues
11 involved in OKADA's testimony were made crystal clear.
12 It was revealed that while TOJO made many replies to
13 the questions of the Senior Statesmen, they none-the-
14 less were not informed of the Government's intention
15 for the future nor of its current operations and also (a)
16 that he gave only a general explanation of events
17 which the Senior Statesmen already knew about and
18 they learned nothing from him that they really wanted
19 to know. He also brought out that SUZUKI, the President
20 of the Planning Board, gave them, as OKADA believed,
21 figures taken at random; (b) and said that TOJO's
22 statement, to the effect that if he gave them the
23

24 (c) T. 29,291-92
25 (d) T. 29,293-94
(a) T. 29,306-7
(b) T. 29,308-9

1 figures and statistics they wanted, the Senior
2 Statesmen would understand the situation, was made
3 in the presence of the Emperor at the time OKADA
4 told the Emperor that the morning session was devoted
5 primarily to explanations by the Government but that
6 the more he heard from the Government, the more
7 concerned and anxious he became. (c)

8 As the Chief Prosecutor observed, in his
9 questions on recross-examination to which the witness
10 agreed, the Senior Statesmen's meeting of November
11 29, 1941 was a "mere gesture and fraud". (a) Senior
12 Statesmen, HIRANUMA included, were victims of the
13 fraud used effectively by the Cabinet to accomplish it.
14 To borrow the Chief Prosecutor's words, "...they
15 defrauded the people of Japan into believing that the
16 Emperor was behind the war with the rescript that he
17 issued a few days after or instantly a few hours
18 after the attack". (b) Whatever advice HIRANUMA
19 gave to the Emperor on that occasion was, we submit,
20 induced by fraud and should not be charged against him.

22 It should be noted that HIRANUMA did not
23 attend the Senior Statesmen's meeting held on 17

24 (c) T. 29,311
25 (a) T. 29,318
(b) T. 29,304

1 October 1941, when TOGO was recommended as Prime
 2 Minister. The prosecution conceals that HIRANUMA
 3 was incapacitated from attending to official duties
 4 from 14 August 1941 to 26 November 1941. (c) It should
 5 be noted and it is significant that it was HIRANUMA,
 6 together with other Senior Statesmen, who held a
 7 meeting in his house which resulted in a resolution
 8 being drawn that caused the downfall of the War
 9 Cabinet. (a)

10 OKADA testified that he, HIRANUMA, KONOYE
 11 and MATSUKI, who had always been opposed to the
 12 idea of war, agreed that the war must be brought to
 13 an end by whatever means possible (b) and tried to
 14 introduce into the Cabinet (TOJO Cabinet) Admiral YONAI,
 15 a man who was opposed to war. HIRANUMA and other
 16 Elder Statesmen had become imbued with the idea that
 17 the Cabinet could not cope with the situation (c) and
 18 held a meeting on July 17, 1944 at the home of HIRANUMA
 19 to discuss the situation and to put into writing the
 20 conclusions reached as a result of the discussion. (d)

22 The resolution was passed because it was
 23 apparent that the Cabinet had lost its popular appeal
 24 and the Elder Statesmen were of the opinion that it

25 (c) Pros. Sum., para. EE-123, pp. 42-43.
 (a) T. 29,264; Ex. 1277, T. 11,372-3-4
 (b) T. 29,262.
 (c) T. 29,263
 (d) T. 29,264

1 was necessary to retire the Cabinet in order to bring
2 the war to an end. This resolution was handed to
3 the Lord Keeper of the Privy Seal KIDO and the TOJO
4 Cabinet resigned en bloc on the following day, 18
5 July 1944, and on the same day an Elder Statesmen's
6 meeting was convened for the purpose of recommending
7 a head for the succeeding Cabinet. (a)

8 It is true that in the resolution referred
9 to there is a sentence saying, "All people must rely
10 and cooperate to build a powerful national Cabinet,
11 which will surge forward unswervingly." (b) The
12 prosecution cites the latter part of the sentence as
13 if it expresses warlike intentions on the part of
14 HIRANUMA and other Elder Statesmen who participated
15 in formulating the resolution. However, it should
16 be remembered that this was a consummation of a plan
17 worked on by them from a year before and it was not
18 an easy task to cause the all powerful War Cabinet
19 to fall. The eyes of the public were kept blindfolded
20 to things which the Elder Statesmen saw clearly and
21 which worried them. In recommending a new Cabinet
22 to take the place of the War Cabinet and gradually
23 lead the country so as to put an end to war, the Elder
24 Statesmen had to move very cautiously and had to cover
25

(a) T. 29,265

(b) T. 29,264

1 Cabinet which terminated the war. The reason HIRANUMA
2 recommended SUZUKI as the Premier succeeding KOISO
3 is because HIRANUMA thought that the war could
4 certainly be brought to an end if SUZUKI accepted the
5 portfolio of Prime Minister and he told OKADA that such
6 was his reason. (a) It is true that HIRANUMA, in his
7 statement at the meeting, did not divulge his true
8 reason for the recommendation and said instead that
9 a man who would fight it out to the end was wanted.
10 It is a matter of common sense to realize that to bring
11 an end to a war, which had lasted nearly four years
12 and on the result of which the destiny of a nation
13 depended, without creating an internal disruption,
14 would take a man whom the people could look up to as
15 a hero and follow as a leader. After a continual
16 rousing of the public for war for numbers of years
17 and popular feeling and sentiment being at a breaking
18 point, no statesman could suddenly introduce a peace-
19 maker as such and have any hope of success. OKADA
20 testified that HIRANUMA told him in private that the
21 appointment of SUZUKI would bring about an early peace
22 but that he could not say so in public because if he
23 did, it would prevent the formation of the Cabinet. (b)

24 (a) T. 29,316
25 (b) T. 29,317

1 up their true intention to bring about peace by
2 whatever means with high sounding words suitable to
3 the occasion.

4 It would be a hasty and unfair conclusion to
5 judge these men by mere words. What they actually
6 accomplished in forming the new Cabinet is what counts.
7 Immediately after the choice fell upon KOISO; HIRANUMA,
8 OKADA, WAKATSUKI and KONOYE conferred and KONOYE
9 went to the homes of all the remaining Elder Statesmen
10 to get their agreement and make arrangements so that
11 the Emperor's order for the formation of the new
12 Cabinet would be given to KOISO and YONAI jointly,
13 appointing YONAI to the Navy Ministry. Such an
14 Imperial Order was without precedent but KONOYE
15 succeeded in his task. This arrangement of having
16 YONAI appointed to the Navy Ministry was in order
17 to insure a man in the Cabinet who was opposed to
18 war. (a)

19
20 In the Senior Statesmen's meeting held on
21 5 April 1945, on the occasion of the resignation of
22 the KOISO Cabinet, HIRANUMA succeeded in recommending
23 SUZUKI, Kentero as head of the succeeding Cabinet. (b)
24 The SUZUKI Cabinet, it must be remembered, is the
25

(a) T. 29,265-29,266
(b) T. 29,266

1 Under the circumstances, nothing could be more
2 natural than his actions.

3 According to the testimony of OKADA, in
4 the Imperial Conference of August 1945 which was held
5 to discuss and decide whether Japan should accept
6 the terms of the Potsdam Declaration, HIRANUMA (a)
7 supported the opinion that Japan should accept it.

8 However, the prosecution cite the testimony of the
9 accused KIDO to prove that HIRANUMA opposed the
10 acceptance. Here we have again the word of a man, in
11 whom the Chief of the prosecution had great respect
12 and confidence, discarded in favor of another accused.
13 We submit that the Chief Prosecutor's confidence
14 was not betrayed and that OKADA told the truth. Even
15 if it were true, a fact which we deny, that HIRANUMA
16 did doubt as to whether the acceptance of the terms
17 of surrender would preserve the national integrity of
18 Japan, that in itself is no criminal act of aggression
19 or for that matter any evidence of one.
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(a) T. 29,269.

CONCLUSION

1 In conclusion we should like to point out
2 that HIRANUMA is by far the oldest man in the Dock
3 and that throughout many decades of his life he has
4 dedicated himself to the service of his country.
5 He has seen it grow from a fledging backward nation
6 into a powerful world state whose destiny it was to
7 be plunged into a world holocaust but to emerge a
8 defeated and broken nation, its cities destroyed, its
9 peoples impoverished; the whole nation lying prostrate
10 at the feet of its conquerors and subject to the whims
11 of world politics.
12

13 HIRANUMA's life has been dedicated to the
14 principle that disagreements between nations should
15 be settled by negotiation and not by armed conflict.
16 He has recognized, as many do, that in these troubled
17 times any nation which has not an armed show of strength
18 sufficient to cause a possible enemy state to analyze
19 that nation's potential ability to wage war has but
20 little chance at the council tables and must depend
21 upon a combination of nations in order to maintain her
22 national integrity. We assert that simply because a
23 person recognizes this fact does not make him a war
24 monger. The leaders of our great democratic nations,
25 who now seek an everlasting and true peace, recognize

1 that peace can be brought about only by the settlement
2 of the disputes among the mighty and not by the wishes
3 of the small; that until such time as all nations,
4 by common consent, bind themselves together in a
5 commonwealth of nations dedicated to the well-being
6 of all mankind, the hope of world peace is just a
7 will-of-the-wisp, sought after, but not to be obtained.

8 During the lifetime of HIRANUMA we have
9 fought one world war to make the world free for
10 democracy, only to be ensnared a few short years later,
11 into a global conflict that was to affect destinies
12 of every nation on the earth.

13 HIRANUMA is charged with having conspired
14 to bring about this war. He was not a young man at
15 the termination of World War I when his nation was
16 aligned with the Allies, and his ideals of life had
17 already been solidified at that time. It is hard to
18 believe that in the mellow years of life he should
19 suddenly change.
20

21 The evidence against HIRANUMA does indicate
22 that from time to time he may have committed some
23 act which would appear to be in furtherance of a
24 desire for war. However, it must be borne in mind
25 that there were times when he and a few others in
Japan were the only bulwark against the rising tide

1 of war. Those who opposed war were in some instances
2 assassinated and their lives were in constant danger.
3 It is incredible that the actions of HIRANUMI could
4 have been a part of a conspiracy to wage aggressive
5 war when the very proponents of such ideas were almost
6 successful in an attempt to assassinate him because
7 of his opposition to their plans. It is no wonder
8 that any man facing such odds would from time to time
9 be forced into a position of apparent compliance.
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On occasions it was even necessary that such be done if any position of power was to be retained which could assist in the campaign to avoid plunging Japan into war with the United States and Great Britain. These times of apparent compliance, to which we have referred viewed in respect to the long over-all period of HIRANUMA's services to his country, are few, and have gained prominence only because of this trial. Unfortunately we were not permitted to present character evidence and consequently the Tribunal is not officially aware of the opinions of such men as General Piggot and ex-Ambassador Grew. However, the court can take into consideration that such evidence was offered and that these men were perfectly willing to testify on behalf of HIRANUMA. We ask the Tribunal to take into consideration the fact that they were so willing to testify even though the Tribunal excluded the substance of such testimony.

Finally, in the dark days before the acceptance of the Potsdam Declaration, we know that again HIRANUMA stood steadfast in his seeking for peace. Even though he realized, from a lifetime of service to his nation, that Japan could never be but a shell of her former self he more fully realized that to continue the war could only bring further misery and deprivation to his fellow

1 countrymen. This he was not willing to do. On that
2 fateful morning, following the decision to accept the
3 terms of the Potsdam Declaration and to remove Japan
4 from the further misery of war, HIRANUMA, having failed
5 to have been assassinated as an obstacle to those who
6 proposed the war, was singled out as a victim of revenge
7 for those who opposed its end. Amid the obscene mouth-
8 ings of an army-led mob shouting imprecations on his
9 aged head, his home was burned, his family terrorized
10 and he, himself, barely escaped with his life. Indeed,
11 the road to peace has many turnings, and the way is
12 rough and he who treads it must bear with fortitude his
13 crown of thorns.

14 With this thought we leave the fate of HIRANUMA
15 in the hands of the Tribunal.

16 - - -

17 THE PRESIDENT: Captain Brooks.

18 MR. BROOKS: I wish to announce, Mr. President,
19 that the prosecution summation paragraphs NF-1 to 35
20 referred to in this summation of MINAMI's may be found
21 at record page 41,276 to 41,310 of 25 February 1948.

22 I will read the first 160 pages of Parts I and
23 II, as shown by the perpendicular lines. Mr. OKAMOTO,
24 my co-counsel, will read the remaining pages.
25

Mr. President and Members of the Tribunal, on

1 behalf of MINAMI, Jiro, we respectfully submit our
2 final arguments with regard to the Counts of the Indict-
3 ment, which are, to avoid duplication, grouped together
4 as follows:

5 Part I. Counts 1, 4 and 5.

6 Part II. Counts 2, 3, 6, 18, 27 and 28.

7 Part III. Counts 7 to 17, 29 to 32 and 34.

8 Part IV. Counts 44 and 53 to 55.

9 In the remaining Counts 19 to 26, 33, 35 to 43,
10 and 45 to 52, there is no charge against MINAMI.

11 Paragraph C-18 drops Count 44 and 53.

12 PART I. Counts 1, 4 and 5.

13 These Counts charge MINAMI with conspiracy to
14 secure Japan's domination of East Asia and of the world
15 (with Germany and Italy) by the waging of illegal wars
16 against any or certain opposing countries.

17 1. The period of the alleged conspiracy starts
18 from January 1, 1928, but Section 1, Appendix A of the
19 Indictment does not charge any Japanese Government which
20 held power prior to December 13, 1931. It follows,
21 therefore, that any and all acts of MINAMI done by orders
22 and in compliance with policies of those Governments are
23 not within the purview of the present trial.

24 Note: (1) Ex. 2292, MINAMI's letter of October
25 6, 1927, as Deputy Chief of General Staff to KOMATSUBARA,

1 Military Attache at the Japanese Embassy in the U.S.S.R.
2 (pp 19,941-19,948) and Ex. 2207, Interrogation of
3 MINAMI referring to the Tsinan Incident (p. 15,784) are
4 clearly out of the scope of the Indictment. Moreover,
5 MINAMI's actions were made "under the orders of the
6 Chief of Staff and the TANAKA Cabinet," MINAMI (p. 15,784

7 (2) The prosecution alleges that such a
8 conspiracy had existed since the introduction of
9 "military training in the school system following the
10 Sino-Japanese War of 1896" and its intensification in
11 1922 "sponsored by the military" and since the commence-
12 ment of "an organized propaganda program" in 1925
13 "advocating the necessity for expansion by Japan" (Mr.
14 Hammack, pp. 808-811). We do not consider it necessary
15 to refute the allegation which has no evidence to show
16 MINAMI's connection therewith.

17
18 2. At any rate, the period up to the resigna-
19 tion of the WAKATSUKI Cabinet in December, 1931, was
20 admittedly the period of the "friendship policy"
21 (Lytton Report, Ex. 57, (p. 41), p. 1,757), of armament
22 reduction and of financial retrenchment (MINAMI, Ex.
23 2435, pp. 19,776 - 19,777). In 1922, Japan signed the
24 Washington Disarmament Treaty and the Nine Power Treaty
25 (Ex. 2319, Ex. 28). In 1924, she reduced her standing
army by four divisions (UGAKI, Ex. 163, p. 1,604;

1 MINAMI, p. 19,776). In 1928, she signed the Kellogg-
2 Briand Pact (Ex. 32) and in 1930, the London Disarmament
3 Treaty (SHIDEHARA, Ex. 156, p. 1,322). In April, 1931,
4 the mobilizable strength for wartime was reduced from
5 32 to 28 divisions and a proposal was under consider-
6 ation to further reduce the peacetime strength of 17
7 divisions (KOISO, Ex. 3375, p. 32,206). In May, 1931,
8 military officers' salaries were cut down, ranging from
9 5.8% for first lieutenants to 12% for generals (Ex.
10 3414, p. 32,803) and the War Ministry was deliberating
11 upon a reduction of their pensions (NAKAMURA, Ex. 3413,
12 pp. 32,803 - 32,804.) Even a plan made by the ex-
13 Cabinet for the reformation of organization and equip-
14 ment of the army was suspended (NAKAMURA, p. 32,804.)
15 It must be acknowledged that MINAMI, either as Deputy-
16 Chief of General Staff or as War Minister in these days,
17 played an important part in the formation and execution
18 of such policies towards peace.

19
20 3. It is alleged by the prosecution that "in
21 1927 the Japanese Government formulated a positive
22 policy toward China which resulted in sending troops to
23 China in May, 1927, and in April, 1928" (Mr. Keenan,
24 p. 437; Mr. Darsey, pp. 1,680 - 1,681.)

25 Note: (1) The prosecution alleges that upon
the advent of the TANAKA Cabinet in 1927, the army was

1 able to influence the government to adopt a so-called
2 "positive policy" toward Manchuria (Mr. Darsey, p. 1,680.)

3 Such an allegation, however, it contradicted by
4 the prosecution's own statement in document No. 0001
5 (p. 1) that "the TANAKA Cabinet conducted a peaceful
6 policy as shown by TANAKA's speech to the Diet on 22
7 January 1929 (Ex. 171, p. 1,769) in which he states Japa-
8 nese contributions to world peace in respect to Manchurian
9 interests and Chinese sovereignty will not be jeopardized.
10 . . .The HAMAGUCHI Cabinet, in power from 2 July, 1929 to
11 4 April 1931 adhered to the peaceful policy of the
12 TANAKA Cabinet."

13 The only evidence adduced for this allegation is
14 perhaps the Lytton Report (p. 41) where TANAKA's policy
15 is compared with that of SHIDEHARA (p. 1,757) but all
16 the witnesses produced by the prosecution deny any
17 sinister meaning in the so-called "positive policy."

18 Note: (2) OKADA (Navy Minister in the TANAKA
19 Cabinet, 1927-1929) is sincerely convinced that such a
20 thing as the "TANAKA Memorandum" did not exist (p. 1,835)
21 and that there was no plan nor policy ever conceived,
22 such as military aggression towards Manchuria and other
23 areas in China (p. 1,888.) He entertained trust and
24 confidence in the leaders of the army, but deemed only
25 the conduct of a few young officers as unfortunate and

undesirable (p. 1,904.)

1 (3) MORISHIMA (Consul at Mukden, 1928-1932)
2 test. that the so-called "TANAKA Memorial" was a
3 fake (pp. 3,097 - 3,098.) At the time of the Nanking
4 Incident in 1927, the Japanese and foreign residents
5 there suffered much damage at the hands of Chinese
6 forces and the British, American and Japanese Governments
7 sent rescue troops (pp. 3,040 - 3,041.) Since then,
8 the public opinion in Japan had become stronger for
9 protective measures on the spot and Premier TANAKA was
10 forced to form his policies in line with such opinion
11 (p. 3,041.) The dispatches of troops to Tsinan on two
12 occasions were made necessary as a result of a general
13 advance of the Chinese revolutionary forces in North
14 China (pp. 3,039 - 3,040.) "It is a mistake to state
15 as a premise that the positive policy of the TANAKA
16 Cabinet was an aggressive one." The only difference
17 between the HAMAGUCHI Cabinet and the TANAKA Cabinet as
18 regards their Manchurian policies was that the former
19 was limited to the protection of vested interests in
20 that area while the latter placed its primary emphasis
21 on the maintenance of law and order in all of Manchuria
22 (p. 3,078.)

24 It is a noteworthy fact that it was the TANAKA
25 Cabinet who wholeheartedly joined in the Treaty for the

Renunciation of War (Ex. 32.)

1 The note sent from the British Foreign Secre-
2 tary (Chamberlain) to the American Ambassador (Houghton)
3 under date of May 19, 1928 (Ex. 2314-A) states as follows:

4 "The Language of Article I, as to the renunci-
5 ation of war as an instrument of national policy, renders
6 it desirable that I should remind Your Excellency that
7 there are certain regions of the world the welfare and
8 integrity of which constitute a special and vital inter-
9 est for our peace and safety. His Majesty's Government
10 have been at pains to make it clear in the past that
11 interference with these regions cannot be suffered. Their
12 protection against attack is to the British Empire a
13 measure of self-defense. It must be clearly understood
14 that His Majesty's Government in Great Britain accept
15 the new treaty upon the distinct understanding that it
16 does not prejudice their freedom of action in this
17 respect. The Government of the United States have com-
18 parable interests any disregard of which by a foreign
19 power they have declared that they would regard as an
20 unfriendly act. His Majesty's Government believe,
21 therefore, that in defining their position they are ex-
22 pressing the intention and meaning of the United States
23 Government." (pp. 17,365 - 17,366.) It is nothing but
24 the same sentiment which made TANAKA speak at the Diet
25

1 on January 22, 1929, that "the Japanese Government, while
2 they will respect the sovereignty of China over Manchur-
3 ia and do all in their power for the preservation of the
4 principles of the open door and equal opportunity, are
5 fully determined to see that no state of affairs arise
6 in Manchuria which shall disturb the local tranquility
7 and thus put their vital interest in jeopardy" (Ex. 171,
8 p. 1,770.)

9 Note: (4) To this policy of the TANAKA
10 Cabinet, no objection was raised by other Powers.
11 According to OKADA, "the advance into Manchuria was to
12 be made peacefully as an alternative to expanding with
13 other sections of the world; for instance, advance to
14 America, which was prevented by a "gentlemen's agree-
15 ment" (p. 1,833) and Premier TANAKA believed that the
16 concentration of immigration to Manchuria was tacitly
17 agreed to by America (p. 1,858.)

18 In our submission, the measures taken by the
19 Japanese Government, in particular by War Minister
20 MINAMI, at the time of the Manchurian Incident did not
21 exceed the limit of self-defense as defined by the
22 British Government in the note above-mentioned (see
23 Part II below.)

24 4. It is alleged by the prosecution that
25 "from January 1, 1928, onwards there was a plot in the

1 Japanese Army, and particularly in the Kwantung Army,
2 supported by certain civilians, to create an incident
3 in Manchuria, which should form a pretext for Japan to
4 conquer, occupy and exploit that country as the first
5 step in a scheme of domination which later extended to
6 other parts of China, to the territory of the Union of
7 Soviet Socialistic Republic, and ultimately to a wider
8 field, aiming to make Japan a dominant power in the
9 world (Section I, Appendix A of the Indictment; Mr.
10 Keenan, p. 437; Mr. Darsey, pp. 1,680 - 1,681.) There
11 is, however, no evidence that MINAMI concurred in such
12 a plot, if it ever existed. Prosecution witness
13 WAKATSUIK (Premier in 1929 and 1931) testified that he
14 "never heard of anything of the kind," such as a con-
15 spiracy by the defendants or any other persons to plan
16 and wage wars of aggression to conquer China and the
17 Pacific Ocean and eventually the world (p. 1,591.)

18
19 Defendant KIDO, collector and chronicler of
20 all rumors true and false, asserts that he has never
21 received any information that MINAMI, as War Minister,
22 army officer or ordinary civilian, participated in plots
23 or machinations of the so-called militarists (pp.
24 31,236.) On the contrary, it is proved that MINAMI was
25 "firmly resolved to prohibit all these activities within
the army" (ex. 3416, report of August 19, 1931, from

1 TOYOMA, Commander of Tokyo Military Police, to MINAMI
2 referring to a lecture given by TOYOMA to his subord-
3 inates, p. 32812.)

4 Note: Ex. 3416 says that meetings of young
5 officers for discussion of the Manchurian-Mongolian
6 question and other problems of the present situation
7 tend to overstep the scope of study and turn into con-
8 crete activities, which are apt to be exploited
9 politically by outsiders and to become a breach of
10 military discipline. "Should this tendency infect non-
11 commissioned officers and men, it would undermine the
12 foundation of the military constitution and invite a
13 thousand years' misfortune." In accordance with the
14 resolution of MINAMI, therefore, the military police
15 was ordered to co-operate in the guidance of young
16 officers and to stave off any ill effects upon military
17 discipline (pp. 32,810 - 32,812.)

18 If his predecessor UGAKI stopped the March
19 Incident (UGAKI, Ex. 163; p. 1,608,) MINAMI dealt with
20 the October Incident by immediate apprehension of the
21 plotters (MINAMI, Ex. 2435, p. 19,790.) At the meeting
22 of the Privy Council on December 9, 1931, Councillor
23 EGI was "quite satisfied" on hearing MINAMI's answer
24 referring to the Incident (Ex. 2205-A, p. 15,767.) KIDO
25 also listened with confidence in the explanation of the

1 March and October Incidents given by NAGATA, a section
2 chief of the War Ministry under MINAMI (p. 31,235.) All
3 this evidence points to the fact that MINAMI was the
4 defender of law and order against any conspiracy alleged
5 by the prosecution.

6 5. It is alleged also that MINAMI "advocated
7 and planned the Mukden Incident" (Colonel Woolworth,
8 p. 15,751) on the basis mostly of newspaper reports.
9 We cannot, however, understand why a luncheon party
10 held by the army authorities in company with some
11 directors of the South Manchurian Railway Company
12 (hereinafter referred to simply as the S.M.R.) has any
13 sinister meaning, even if they discussed Manchurian
14 questions (Ex. 2202-A; pp. 15,752- 15,753) or why
15 MINAMI's statement, refusing any increase of troops in
16 Korea, has anything to do with the Mukden Incident,
17 except in the contrary sense (Ex. 2202-A, pp. 15,753 -
18 15,754.)

19 Note: (1) Ex. 2202-A, the Osaka Asahi of
20 July 1, 1931, reports nothing more serious than the
21 above two events. The former was a courtesy banquet
22 given by the War Ministry by way of a return invitation
23 to the leading members of the S.M.R. and no talks were
24 made discussing politics pertaining to Manchuria and
25 Mongolia (KOISO, Ex. 3375, pp. 32,215 - 32,216; SOGO,

Ex. 3415, pp. 32,809, language corrections at p. 31,705;

1 MINAMI, p. 19,811.) The latter was MINAMI's statement
2 after an unofficial conference of military councillors.
3 According to MINAMI's testimony, there was a long-
4 standing desire on the part of the army and civilian
5 circles in Korea to increase the divisional strength
6 there, for the purpose not only of defense but of
7 promoting the local prosperity. On becoming the War
8 Minister, however, MINAMI found it impossible to comply
9 with their desire (pp. 19,812 - 19,813.) To quell the
10 urgings of lobbyists sent from Korea to Tokyo he said:
11 "I must make it clear that this question had not yet
12 been decided upon at the Big Three Conference. There-
13 fore, such things as what division will be dispatched
14 to Korea or where it will be stationed are not the
15 question at all. In order to avoid unnecessary anxieties
16 on the part of the local people, I state this" (pp.
17 15,753 - 15,754, language correction at p. 31,705.)

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19 Note: (2) Ex. 2203-A, excerpt from a bio-
20 gaphy of MINAMI, well deserves the following remark of
21 the President: "Why put that before us? If the world
22 knows that we get this stuff and believe we act on it,
23 what will they think of us? It is nonsensical. We are
24 judging these men, not the editors of the Japanese press
25 or the caricaturists, and we judge them from what they

say and do and from what others in association with
1 them say and do" (pp. 15,758.)

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6. Also, we cannot find anything approach-
1 ing to "the dissemination of expansionist propaganda,"
2 as alleged by the prosecution (p. 2193) in his speech
3 at the divisional commanders' conference of August 4,
4 1931 (Ex. 186 and 2393).

Note: (1) It is said that "the prosecution
5 has gone through all available newspapers, and the
6 Japan Times is the only one that had quotes of the
7 speech in it" (p. 2204). However, according to
8 exhibit 2393, the Japan Chronicle of April 5, 1931,
9 MINAMI spoke at the conference that owing to the
10 strained financial circumstances of the state, the
11 military authorities were obliged to defer improve-
12 ments of organization and equipment, that the abolition
13 or reduction of some institutions and officers were
14 inevitable and that a preparatory committee was
15 appointed for the forthcoming assembly of the Geneva
16 Disarmament Conference (pp. 19200-19203). According
17 to MINAMI's testimony, the allotment for the army was
18 only 180 million yen out of the total budget of
19 1448 million and it was necessary to cut down numeri-
20 cal strength, dismiss a number of officers and make
21 adjustment in various branches of army service
22 (pp. 19815-19816). As such reductions were made
23 repeatedly by his predecessors, he had to explain as
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1 best as he could the acute situation facing the army,
2 lest his further reform might cause public unrest
3 (p. 19816, p. 19819). He stressed, therefore, that
4 the divisional commanders should devote their efforts
5 to the education and training of officers and men to
6 make up the loss (p. 19819). He instructed them also
7 to be well acquainted with Manchurian problems which
8 were becoming important at that time (p. 19814-19815).
9 He expressed the view that Manchuria was Japan's life
10 line (p. 19807), but never entertained any idea of
11 using it as a route through which to attack Russia
12 (p. 19809). In the event of an attack by Russia,
13 Japan was to participate in the defense of Manchuria
14 through diplomatic negotiations with China, without
15 involving the latter in the clash (pp. 19807-19808).
16 This is nothing but the same thought as that expressed
17 by Chamberlain.

18 Note: (2) Exhibit 184, letter of August 6,
19 1931, from the so-called Citizen's Disarmament League
20 to MINAMI referring to his speech, has no more logic
21 than ravings of a lunatic, when it charges him with a
22 violation of Article 103 of the Military Criminal
23 Code. It is certainly within the competence of a War
24 Minister to "present a memorandum to the Throne, his
25 views to the Government, or any other kind of petition

1 concerning political matters, or give publicity to
2 his opinions either in discourse or in written form"
3 (p. 2193).

4 7. According to the Lytton Report (Ex. 57,
5 p. 67), it is said that "vigorous speeches of the
6 Japanese War Minister in Tokyo, counselling direct
7 action by their army in Manchuria, were reported"
8 (p. 1785). There is, however, no evidence either in
9 the above-mentioned speech or in any other that he
10 counselled anything of the sort. Casual references
11 to hasty advocates of armament limitation and to the
12 recent situation in Manchuria (p. 2209) do not super-
13 sede the real purport of his speech, proclaiming
14 retrenchment and arms reduction, which was perfectly
15 in accord with the policy of the Government. Compare
16 the speech of MINAMI with the one made by Premier
17 WAKATSUKI on July 21, 1931 (Ex. 2392). While repudi-
18 ating any imperialistic schemes and all desire for
19 territorial aggrandizement, WAKATSUKI asserted that
20 Japanese rights and interests in Manchuria and
21 Mongolia were essential to her existence and could
22 in no circumstance be abandoned, no matter who
23 demanded their abandonment, and that Japan was unable
24 to exercise her treaty rights and privileges of res-
25 idence and leaseholding on account of Chinese

1 determination to drive the Japanese off the land
2 (pp. 19195-19197). Compare the same with the
3 speeches of General Chiang Kai-shek, President of
4 the Nanking Government, who openly and repeatedly
5 denounced Japan on September 7 and 14, 1931, for
6 her alleged activities in connection with the Canton
7 revolt, for the murder of Chinese in Korea and for
8 occupation of Wanpoashan in Manchuria (Ex. 2396 and
9 2397, pp. 19210-19214). According to the Japan
10 Chronicle of September 9, 1931, "It is feared that
11 the General's (Chiang) inflammatory address will add
12 fuel to the anti-Japanese agitation now going on in
13 various parts in China" (p. 19211). It is, there-
14 fore, not fair on the part of the Lytton Report to
15 refer to MINAMI's speech, which was no more vigorous
16 than the Japanese Premier's, and to forget to mention
17 the "fiery attacks" upon Japan by the Chinese Presi-
18 dent (p. 19210).

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20 Note: It is difficult to understand why
21 such a mild and harmless speech of MINAMI became so
22 notorious, unless we accept the explanation of NAKA-
23 MURA, Chief of Personnel Bureau of the War Ministry
24 in 1931, that a plot was laid by a section of some
25 political party who, taking advantage of the instabil-
ity of the situation in those days, planned to

1 overthrow the Government by tripping up a member of
2 the Cabinet (Ex. 3413, pp. 32805-32806).

3 8. The fact that MINAMI did nothing in
4 opposition to the Government was clearly testified
5 by WAKATSUKI (pp. 1583 - 1584). According to
6 SHIDEHARA's testimony, he and MINAMI never maintained
7 opposite ideas, neither came into loggerheads nor had
8 emotional frictions with each other. They worked
9 together, resigned together and have been on intimate
10 terms to this day (Ex. 3479A, pp. 33551-33552).

11 Note: SHIDEHARA emphatically refutes the
12 allegation of TANAKA, Ryukichi (pp. 2019-2020;
13 pp. 20065-20066), as "simply a mischievous rumor
14 spread by persons, who do not know the true facts"
15 (p. 33551). He is convinced that MINAMI made every
16 effort to cooperate with the Cabinet in making arma-
17 ment reductions (p. 1328) and did everything in his
18 power to prevent the further expansion of the
19 Incident (p. 1338; p. 33551).

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21 9. Although it was reported by a New York
22 Herald Tribune correspondent that MINAMI made a state-
23 ment on October 18, 1931, referring to Japan's atti-
24 tude towards an intervention of a third party in the
25 Sino-Japanese dispute (Ex. 2204A, pp. 15759-15760;
p. 19862), SHIDEHARA is "quite sure" of the fact that

1 MINAMI never made at any Cabinet meeting such a
2 suggestion as secession from the League of Nations
3 (p. 33657). On the contrary, MINAMI "heartily"
4 agreed with SHIDEHARA on the plan to invite a
5 Commission of Enquiry (MINAMI, p. 20058) which was
6 proposed, after the unanimous approval of the
7 Cabinet, to the League on November 21, 1931
8 (Ex. 57 (p. 6); p. 1694).

9 Note: "We were actively cooperating with
10 the League of Nations at Geneva, and we supplied
11 all the necessary information, and our delegates
12 participated in the debates and discussions all the
13 time. And there was no occasion for MINAMI to say
14 that we should withdraw from the League of Nations"
15 (SHIDEHARA, p. 33657; MINAMI, pp. 19862-19865).

16 10. It is further alleged by the prosecution
17 that the WAKATSUKI Cabinet "was forced to resign by
18 reason of Cabinet opposition to the Manchurian
19 Incident, this resignation being forced by the actions
20 of the defendant MINAMI, who was then "War Minister"
21 (Mr. Hammack, p. 816). The prosecution states that
22 "in support of the allegations set forth in Section
23 6 of Appendix A of the Indictment" (p. 807), they
24 "will demonstrate the extent of the power exercised
25 by these defendants over the Government of Japan"

(p. 816). Did they, however, succeed in such a
1 demonstration? According to WAKATSUKI's testimony,
2 his Cabinet was unanimously opposed to any expansion
3 by the army (p. 1557), and since MINAMI was present
4 at almost every Cabinet meeting, he must have agreed
5 in the unanimous opinion of the Cabinet (p. 1571).
6 The direct cause of the fall of the Cabinet was not
7 by any action on the part of War Minister MINAMI, but
8 by the actions of Home Minister ADACHI (p. 1580).
9 SHIDEHARA definitely testified: "It is not true that
10 the WAKATSUKI Cabinet was forced to resign through
11 the action of General MINAMI" (p. 1376). MITARAI
12 testified also to the same effect (p. 17767-17768).

14 Note: According to SHIDEHARA's testimony,
15 the remote cause was due to difficult financial
16 questions, and the Manchurian Incident aggravated the
17 situation (p. 1344), but "the fact of the matter" was
18 that no agreement of views was reached on the question
19 of Cabinet reorganization (pp. 1342-1343). According
20 to WAKATSUKI, Home Minister ADACHI continued his
21 negotiations with the opposite party, Seiyukai, con-
22 trary to the Premier's desire, would not even attend
23 the Cabinet meeting, and refused to resign unless the
24 Cabinet resigned as a whole (pp. 1579-1583). According
25 to defendant SHIRATORI, then Bureau Chief of the

1 Foreign Ministry, SHIDEHARA told him repeatedly at
2 the time of the Cabinet resignation that as far as
3 diplomacy itself was concerned there was no need to
4 quit, that is to say, SHIDEHARA did not consider that
5 diplomatic relations pertaining to the Manchurian
6 Incident had become difficult or impossible (pp. 35057-
7 35058).

8 11. Except the single instance of a decora-
9 tion from Germany (pp. 20016-20017), there is no
10 evidence at all to connect MINAMI with any conspiracy
11 in conjunction with Germany and Italy. If such a
12 diplomatic courtesy could be a proof of the serious
13 charge of conspiracy, there would be many high-ranking
14 officials in America and Europe who would be guilty
15 of the offense of receiving decorations from Japan.

16 12. As the last question of general nature,
17 we shall now examine whether or not MINAMI personally
18 entertained the idea of securing Japan's domination
19 of East Asia and of the world. According to exhibit
20 2207, interrogation of MINAMI, he believed that
21 Asiatics wished to be freed of the yoke of foreign
22 domination (p. 15787; p. 20034), but this does not
23 mean that they wished to exchange it for the yoke of
24 Japanese domination (p. 20036). In other words, he
25 believed in Asia for Asiatics (p. 15787), but not in

1 Asia for Japanese. He believed that Manchukuo was
2 an independent and peaceful area in the Orient, but
3 other countries, such as Burma, the Dutch Indies,
4 China or the Philippines, need not "follow the
5 pattern set in Manchukuo" (p. 20036).

6 As a member of the Privy Council from 1942
7 to 1945, he was "not particularly shocked" by the
8 remark of Premier TOJO on the proposed incorporation
9 of occupied territories into the Great East Asia Co-
10 Prosperity Sphere (Ex. 687A, p. 12076, Minutes of
11 October 12, 1942, p. 20046) nor by the explanation of
12 MORIYAMA, Director of the Legislation Bureau, on
13 International Law (Ex. 1275, Minutes of August 18,
14 1943, pp. 20027-20029). In these days, he was "a
15 sort of a deaf-mute" and "maintained a policy of
16 silence" (p. 20030). In spite of this infirmity,
17 however, he agreed with SUZUKI, Committee Chief, in
18 the opposition to the establishment of the Ministry
19 of Greater East Asiatic Affairs (Ex. 687A, p. 7421,
20 pp. 12093-12094), Minutes of October 20, 1942,
21 pp. 20021-20023), especially to the revision of
22 colonial administration in consequence thereof
23 (Ex. 2435, p. 19797; pp. 20023-20026). On the face
24 value of speeches made by the representatives at the
25 Great East Asia Conference in 1943 (Ex. 2351, Address

1 by Wan Waithayakon; Ex. 2352, address by Laurel;
2 Ex. 2353, address by Ba-Mo, p. 18021), not only was
3 there nothing wrong with the idea itself of the Co-
4 Prosperity sphere, but it was quite commendable as a
5 policy of international relations. All the Japanese
6 believed in it, MINAMI being no exception, on account
7 perhaps of the strenuous propaganda since the KONOCYE
8 Cabinet in 1938 (YAMAMOTO, Vice-Minister of Greater
9 East Asia Affairs Ministry, 1942-1944, p. 17924).

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1 The Greater Japan Political Society, of
2 which MIYAMI was the President for about four months
3 in 1945, had as one of its aims the extension of the
4 said Sphere as outlined by the Government (p. 15,786;
5 p. 20,034), but his understanding of the Sphere did
6 not include India (p. 20,035), because it belonged to
7 a different race. He neither adheres to the viewpoint
8 on Greater East Asia, nor supports the idea that Japan
9 ought to rule over all the nations that make part of
10 the said Sphere (p. 20,046). He regarded any doctrine
11 as entirely wrong, the aim of which was that Japan
12 should rule over the whole world and that the Japanese
13 Emperor should be Emperor of the whole world (p. 20,047).

14 "The idea of ruling the world is an entirely mistaken
15 notion," he testified (p. 20,048). From the above
16 testimony it may be seen that although he was as much
17 influenced by the governmental slogan then prevailing
18 as an ordinary citizen would be so influenced, he never
19 attributed any evil sense thereto, such as the domina-
20 tion of other countries or peoples.

21 When he became a privy councillor in 1942,
22 the Pacific War was already in full swing. When he
23 was nominated as President of the Japan Political
24 Society in 1945, there were clear indications of
25 Japanese defeat (p. 20,083). This Society was different

1 from the Imperial Rule Assistance Association or the
2 Imperial Rule Assistance Political Association and had
3 no connection whatsoever with the Government (MITARAI,
4 Ex. 3436, pp. 32,923-32,924). But he led this Society,
5 members whereof held the absolute majority in the Diet
6 (MINAMI, p. 20,088) and amounted to more than 500,000
7 in total of prefectural chapters (MITARAI, p. 32,924),
8 to accept peace under the Potsdam Declaration without
9 resulting in any confusion (MINAMI, p. 20,088). He
10 did his duty as a patriot and as the leader of a
11 political party. What more could be expected of him?
12 We submit, therefore, that MINAMI is innocent of any
13 crime charged in Counts 1, 4, and 5.

15 Note: (1) MINAMI's pet theory was that
16 no military man should participate in politics, but he
17 was prevailed upon to accept the presidency of the
18 Japan Political Society by a committee of influential
19 citizens, especially by the advice of SUZUKI, then
20 President of the Privy Council (MITARAI, pp. 32,924,
21 32,925).

22 (2) On August 9, 1945, MINAMI advanced his
23 opinion to the same SUZUKI, then Premier, that it
24 would be better to seek peace (MINAMI, p. 20,088;
25 MITARAI, p. 32,925). In view of Mr. Keenan's remark
in his opening statement (p. 464), MINAMI's attitude

1 towards the termination of the Pacific War is relevant
2 and material (pp. 20,083, 20,084).

3 PART II. Counts 2, 3, 6, 18, 27 & 28.
4

5 These counts charge MINAMI with conspiracy
6 to secure Japan's domination of Manchuria and of all
7 China and also with the planning, preparing, initiating
8 and waging of illegal wars against China, during
9 the respective periods commencing from January 1, 1928,
10 in counts 2, 3 and 6, from September 18, 1931, in
11 counts 18 and 27, and from July 7, 1937, in count 28.
12 As a matter of expediency, our arguments will be divided
13 into the following seven sections:
14

15 Section 1. Prior to the Mukden Incident.

16 Section 2. The Mukden Incident.

17 Section 3. The Crossing of Border by the
18 Korean Army.

19 Section 4. Consular Reports and Governmental
20 Measures.

21 Section 5. Manchukuo Questions.

22 Section 6. North China Questions.

23 Section 7. The China Incident.
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1 Section 1. Prior to the Mukden Incident.

2 1. It is alleged by the prosecution that
3 "as a result of a previous policy of aggression, Japan,
4 by 1928, had acquired substantial rights and interests
5 in Manchuria. These included: 1. A 99-year lease of
6 the Kwantung Peninsula; 2. A 99-year lease of the
7 S. M. R. (This railway became the quasi-government in
8 the territory which it served); 3. The right to operate
9 other railroads in Manchuria; 4. The right to establish
10 Japanese settlements at Antung, Mukden and Yinkow; 5.
11 The right of priority in the employment of special
12 officials; 6. The right to establish post officials
13 and to operate telephone and telegraph services; 7.
14 The right of priority with respect to mining and forestry;
15 8. The right to station railway and consular guards.
16 These guards were regular Japanese soldiers. This latter
17 right and the violation of limitation with respect
18 thereto afforded the opening wedge by which large
19 armed forces were congregated in Manchuria to supplement
20 the Kwantung Army in the leased peninsula" (Mr. Darsey
21 pp. 1679, 1680).

22 It must be pointed out, first of all, that
23 the above-mentioned rights were acquired not "as a
24 result of a previous policy of aggression," but as a
25

1 result of legitimate agreements between the countries
2 concerned. Even "from the moral point of view" (Mr.
3 Keenan, p. 472), which should be taken into considera-
4 tion in any criminal case, Japan had no guilty mind
5 in the possession and protection of these rights.

6 Note: (1) "The Sino-Japanese war of 1894 -
7 1895 had given Russia an opportunity to intervene,
8 ostensibly on behalf of China, but in fact in her own
9 interest, as subsequent events proved. Japan was forced
10 by diplomatic pressure to return to China the Liaotung
11 Peninsula... In 1896 a secret defensive alliance was
12 concluded between the two countries (China and Russia)...
13 In 1898 Russia secured a lease for twenty-five years
14 of the southern part of the Liaotung Peninsula, which
15 Japan had been forced to give up in 1895, and also
16 secured the right to connect the Chinese Eastern Rail-
17 way at Harbin with Port Arthur and Dalny (now Dairen)
18 in the Leased Territory. Authority was given for the
19 construction of a naval port at Port Arthur. In 1900
20 Russia occupied Manchuria... In Korea Russian pressure
21 increased also. In July 1902 Russian troops appeared
22 at the mouth of the Yalu River. Several other acts
23 convinced Japan that Russia had decided upon a policy
24 which was a menace to her interests, if not to her very
25 existence." (Ex. 57, pp. 33-34, pp. 18,727-18,730)

1 Under these circumstances who can blame Japan for
2 deeming Manchuria as her "life line"? Who can accuse
3 the Japanese of becoming Russophobes? The subsequent
4 acquisition by Japan of the Russian rights in South
5 Manchuria was nothing but the recovery of what she was
6 robbed in 1895 (ex. 57, p. 39, p. 18,733, 18,734).

7 Note: (2) "The Nine-Power Treaty of February
8 6, 1922, in spite of its provisions with respect to
9 the integrity of China and the policy of the "Open Door,"
10 has had but qualified application to Manchuria in view
11 of the character and extent of Japan's vested interests
12 there, although textually the Treaty is applicable to
13 that region. The Nine-Power Treaty did not materially
14 diminish the claims based on these interests, although ...
15 Japan formally relinquished her special rights regard-
16 ing loans and advisers which had been granted in the
17 Treaty of 1915" (Ex. 57, p. 41, pp. 18,736, 18,737).
18 The fact that Japan formally relinquished these two
19 rights is evidence of the recognition by other Powers
20 of her rights not so relinquished (Ex. 2319H, the
21 Chairman's (HUGHES) report at the 6th Plenary Session
22 (February 4, 1922) of the Washington Conference, pp.
23 17,439 - 17,447).
24

25 2. Secondly, the prosecution has left out
from the above list of Japanese rights in Manchuria the

1 following rights of great importance. To quote from
2 the Minutes of the Washington Conference: "It is
3 further to be pointed out that by Article II, III, and
4 IV of the Treaty of May 25, 1915, with respect to
5 South Manchuria and Eastern Inner Mongolia, the Chinese
6 Government granted to Japanese subjects the right to
7 lease land for building purposes, for trade and manu-
8 facture, and for agriculture purposes in South Man-
9 churia, and to engage in any kind of business and manu-
10 facture there, and to enter into joint undertakings
11 with Chinese citizens in agriculture and similar in-
12 dustries in Eastern Inner Mongolia. With respect to
13 this grant, the Government of the United States will,
14 of course, regard it as not intended to be exclusive,
15 and as in the past, will claim from the Chinese Govern-
16 ment for American citizens the benefit accruing to
17 them by virtue of the most favored nation clauses in
18 the treaties between the United States and China"
19 (Ex. 2319E, p. 17,444).

20
21 THE PRESIDENT: We will recess for fifteen
22 minutes.

23 (Whereupon, at 1445, a recess was
24 taken until 1500, after which the proceed-
25 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Brooks.

4 MR. BROOKS: I resume reading at the bottom
5 of page 25: Even if the Chinese Delegation at the Con-
6 ference "reserved their right to seek a solution on all
7 future appropriate occasions concerning those portions
8 of the Treaties and Notes of 1915 which did not appear
9 to have been expressly relinquished by the Japanese
10 Government" (Ex. 2319-H, T. 17,446), that will not ex-
11 cuse the Chinese persecution of the Japanese and Korean
12 residents in Manchuria in violation not only of the
13 provisions of the above mentioned Treaty, but of the
14 principles of equal opportunity and open door of the
15 Nine-Power Treaty. When we consider the cruel and
16 insidious attitude of the Chinese authorities in spite
17 of all the concessions made by Japan for the benefit of
18 China, we cannot but conclude that it was China, not
19 Japan, who adopted a positive policy prior to 1931
20 and took aggressive actions against legitimate rights
21 of Japan in Manchuria.
22

23 Note: (1) "Mr. Root took the inquiry of
24 Baron KATO to refer to the meaning of the words "admin-
25 istrative integrity" (of Article I of the Nine-Power
Treaty) with reference to their effect upon privileges

1 that had already been granted. He replied that this
2 phrase certainly did not affect any privileges accorded
3 by valid or effective grants; that, on the contrary,
4 respect for the administrative integrity of a country
5 required respect for the things that are done in the
6 exercise of its full sovereignty by an independent
7 State" (Ex. 2319-A, Minutes of the 3rd Committee Meet-
8 ing (November 21, 1921) of the Washington Conference,
9 T. 17,397-17,398).

10 Note: (2) "The fact that restrictions were
11 placed upon the residence, travel and business activ-
12 ities of Japanese subjects in the interior of South
13 Manchuria, and that orders and regulations were issued
14 by various Chinese officials prohibiting Japanese or
15 other foreigners from residing outside the Treaty Ports
16 or from renewing leases of buildings is not contested
17 in the documents officially presented to the Commission
18 by the Chinese assessor. Official pressure, sometimes
19 supported by severe police measures, was exerted upon
20 the Japanese to force them to withdraw from many cities
21 and towns in South Manchuria and Eastern Inner Mongolia,
22 and upon Chinese property owners to prevent them from
23 renting houses to Japanese" (Ex. 57 (p. 53), T. 18,742-3).

24 Note: (3) Innumerable instances of treaty
25 violations by the Chinese were reported to Tokyo, e.g.

1 Ex. 2386, report of February 5, 1919, on the regulations
2 of the Anti-Japanese Society for Confiscation of Japanese
3 Goods (T. 19,156-19,158); Ex. 2387, report of April 24,
4 1919, on a proclamation of the Governor of Tielin Hsien,
5 prohibiting all leases of house-sites to the Japanese
6 (T. 19,161 - 19,163); Ex. 2388, report of August 2, 1929
7 on a law of the North Eastern Political Council, imposing
8 death upon a vendor of land to a foreigner without
9 permission (T. 19,165 - 19,167); Ex. 2511, report of
10 August 14, 1929, on the Association for Expediting the
11 Abolition of Treaties (T. 21,040 - 21,042); Ex. 2389,
12 report of August 19, 1929, on the Regulations of the
13 Governor of Kirin Province, declaring that the Koreans,
14 whether nationalized or not, had no right to acquire
15 or lease land (T. 19,167 - 19,170); Ex. 2390, report of
16 November 8, 1929, on the Regulations of the Board of
17 Construction of the Kirin Province, placing a ban on
18 foreigners to reclaim or cultivate rice fields (T. 19,177);
19 and Ex. 2391, report of June 9, 1931, on a disciplinary
20 law of the Governor of Liaoning Province against sale
21 or lease of land to a foreigner under penalty of death
22 or imprisonment as well as confiscation of the offender's
23 property (T. 19,182 - 19,186).
24
25

Note: (4) SHIDEHARA regretted that his sincerity towards China was not appreciated sufficiently by

1 Chinese Government officials and the Chinese people at
2 large (T. 1,353). If the above state of affairs happen-
3 ed to any other country, would her Foreign Minister be
4 content with the expression of regret and become still
5 more conciliatory? Even the Lytton Report (p. 18)
6 remarks as follows: "Having started upon the road of
7 international co-operation for the purpose of solving
8 her difficulties, as was done in Washington, China
9 might have made more substantial progress in ten years
10 that have since elapsed had she continued to follow that
11 road. She has only been hampered by the virulence of
12 the anti-foreign propaganda which has been pursued" (T.
13 18,688). "China demands immediately the surrender of
14 certain exceptional powers and privileges because they
15 are felt to be derogatory to her national dignity and
16 sovereignty. The foreign Powers have hesitated to meet
17 these wishes as long as conditions in China did not
18 ensure adequate protection of their nationals, whose
19 interests depend on the security afforded by the enjoy-
20 ment of special treaty rights. The realization of
21 China's national aspirations in the field of foreign
22 relations depends on her ability to discharge the
23 functions of a modern Government in the sphere of
24 domestic affairs, and until the discrepancy between
25 these two has been removed the danger of international

1 friction and of incidents, boycotts, and armed inter-
2 vention will continue" (p. 23) T. 18,707).

3 3. Thirdly, referring to the above allegation
4 of the prosecution, it must be pointed out that even
5 after the outbreak of the Mukden Incident, Japan did not
6 violate any treaty limitation with respect to her right
7 to station railway and consular guards, and also that
8 the consular guards were not regular soldiers, but
9 merely policemen (Ex. 2319-B, explanation given by the
10 Japanese Delegates at the 9th Committee Meeting (November
11 29, 1921) of the Washington Conference, T. 17,400 - 17,401;
12 T. 17,402 - 17,405).

13 Note: (1) Ex. 189, Governmental proclamation
14 issued after the Extraordinary Cabinet Meeting of
15 September 24, 1931, states: "It may be added that
16 while a mixed brigade of 4,000 men was sent from Korea
17 to join the Manchurian garrison, the total number of men
18 in the garrison at the present still remains within the
19 limit set by the treaty" (T. 2,244).

20 Note: (2) Ex. 2298, Additional Articles to
21 the Portsmouth Treaty, signed September 5, 1905,
22 Paragraph 3 of Item I, reads: "The High Contracting
23 Parties reserve to themselves the right to maintain
24 guards to protect their respective railway lines in
25 Manchuria. The number of such guards shall not exceed

1 fifteen per kilometre and within that maximum number
2 the Commanders of the Japanese and Russian Armies shall
3 by common accord, fix the number of such guards to be
4 employed, as small as possible having in view the actual
5 requirements" (T. 20,051 - 20,052).

6 Note: (3) KAWABE testified: "For the protec-
7 tion of the approximate 1,000 kilometre length of the
8 railway, Japan had the right to station 15,000 men. In
9 1931, however, our troop strength in Manchuria was the
10 "Independent Garrison Force" under Major General MORI,
11 which was exclusively assigned to guarding of the railway,
12 having the strength of 6 battalions totaling four thousand
13 and several hundred men, and also the Second Division
14 having approximately 5,500 men, under Lieutenant General
15 TAMON, which was stationed in Kwantung-Chow, south of
16 Liavang. The total of these two, amounting to an
17 approximate strength of 10,000, was under the command
18 of Lieutenant General HONJO, the then commander in chief
19 of the Kwantung Army" (Ex. 2408, T. 19,409).

21 Note: (4) Ex. 57 (T. 71) states: "2nd Divis-
22 ion, 5,400 men and 16 field-guns; Railway Guards about
23 5,000 men; Gendarmerie about 500."

24 Note: (5) The reason why Japan did not with-
25 draw the garrison at the time of Russian withdrawal,
is stated in Ex. 2319-B, T. 17,400 - 17,401; T. 17,414 -

17,415.)

1 4. It is alleged by the prosecution: "That
2 the high military command of Japan and, in particular,
3 the Kwantung Army were involved in this conspiracy to
4 seize and dominate Manchuria is shown by the fact that
5 within twenty-four hours of the Incident at Mukden large
6 Japanese armies were spreading out over Manchuria. Such
7 immediate action (in view of our knowledge of logistics)
8 must have been preceded by many weeks or months of prepar-
9 ation. This is also indicated by General MINAMI's strong
10 militaristic speech at a conference of Division Command-
11 ers concerning Manchuria and Mongolia August 4, 1931"
12 (Mr. Williams, T. 16,732-16,733).

14 As to MINAMI's speech, we have already discussed
15 it elsewhere (see Part I, par. 6 above). How could it
16 be connected with the immediate action taken by the
17 Kwantung Army on the outbreak of the Incident? Any War
18 Minister in any country would hope his officers would
19 do their duty "in educating and training the troops with
20 enthusiasm and sincerity" (Ex. 186, Part I, T. 2,210),
21 but it is quite another thing to employ the troops for
22 the purpose of aggression. His primary responsibility
23 towards the State is to maintain the whole army in
24 preparedness for emergency, but this does not make him
25 a conspirator, under International Law. Had all wars,

1 whether for self-defense or otherwise, become impossible
2 and had no more armaments nor War Ministers been required,
3 then we might have been able to accuse MINAMI of a
4 so-called "militaristic speech." We believe, however,
5 that the present Tribunal is not concerned with such a
6 remote conjecture. The only criterion in this case
7 lies, no doubt, in the question whether or not MINAMI
8 overstepped the scope of his duty as War Minister or
9 was negligent in the execution thereof.

10 We call special attention to Note 5 and Note 6
11 hereunder.

12 Note: (1) According to I-HIHARA (Ex 2584-A),
13 "at the time when Japan obtained the right to station
14 her troops in Manchuria after the Russo-Japanese War,
15 the Chinese forces in four northeastern provinces were
16 so meager that Japan could manage to defend the far-
17 stretching South Manchurian Railway and also to protect
18 her residents with the small force allowed by the
19 treaty" (T. 22,108). "Chang Hsueh-liang - - - attempted
20 to reorganize his forces and to reinforce their armaments
21 in both quantity and quality, namely, maintenance of a
22 standing strength amounting to 220,000, enlargement of
23 the munitions factory in Mukden, equipping his forces
24 with tanks, airplanes and other modern arms, and
25

strengthening of training systems, etc. They were
1 superior in numbers and equipment to our forces in
2 Manchuria at that time, and were in high spirits with
3 related anti-Japanese sentiments. Their disposition was
4 rearranged into an encircling position so that they
5 besieged those areas occupied by our army along the
6 South Manchurian Railway. In the face of such a
7 challenging attitude, the Kwantung Army scattered in
8 an extensive area was placed in a dangerous position
9 from a military point of view" (T. 22,109 - 22,110;
10 see also ITAGAKI, Ex. 3316, T. 30,257).

12 Note: (2) Ex. 57 states: "The Manchurian
13 authorities realized that, as before, their power derived
14 much more from their armies than from Nanking. This
15 fact explains the maintenance of large standing armies
16 numbering about 250,000 men, and of the huge arsenal
17 on which more than \$200,000,000 (silver) are reported
18 to have been spent. Military expenses are estimated
19 to have amounted to 80% of the total expenditure"
20 (p. 18,723). Compare the above with Japan's standing
21 army of 17 divisions (see Part I, Par. 2), and its
22 allotment of 180,000,000 Yen out of the total budget
23 of 1,448,000,000 Yen (see Part I, par. 6, Note (1) above).

25 Note: (3) Ex. 2330-A, the 9th Resolution of
the Washington Conference, reads: "Whereas the Powers

1 attending this conference have been deeply impressed
2 with the severe drain on the public revenue of China
3 through the maintenance in various parts of the country
4 of military forces excessive in number and controlled
5 by the military chiefs of the provinces without coordin-
6 ation; and, whereas, the continued maintenance of these
7 forces appears to be mainly responsible for China's
8 present unsettled political conditions, - - - it is
9 Resolved: That this conference express to China the
10 earnest hope that immediate and effective steps may be
11 taken by the Chinese Government to reduce the aforesaid
12 military forces and expenditures" (T. 17,448 - 17,449).
13 Did China ever reduce her forces and expenditures in
14 compliance with this resolution? Compare the Chinese
15 disregard with Japan's steady and conscientious reduc-
16 tions in armaments from 1924 to 1931 (see Part I, par. 2
17 above). Under these circumstances which one should be
18 blamed for a conspiracy of aggression and for the
19 imminence of a crisis in Manchuria, the War Lord who
20 ignored the resolution of the Washington Conference or
21 the War Minister who faithfully observed the retrench-
22 ment policy to such an extent as to even cut down mil-
23 itary officers' salaries?
24

25 Note: (4) ISHIHARA testified: "According

1 to the order and instructions received from the central
2 headquarters of supreme command, preparations for the
3 worst had been made for the preceding several years"
4 (Ex. 2584, T. 22,111). Such instructions did not come
5 from the War Minister; but from the Chief of General
6 staff, acting on orders from the Emperor and under the
7 scope of operational plans (T. 22,176). The order was
8 not to use force against force, but to prepare for such
9 an eventuality (T. 22,177). "It is the responsibility
10 of the Chief of General staff to set up operational and
11 strategic plans and the War Minister has no authority
12 concerning this. However, when these plans have been
13 completed, after having first been approved by the
14 Emperor, they are shown to the War Minister" (T. 22,153).

15 On the other hand, it must be noted that the Kwantung
16 Army's proposal to increase the numbers and rearrange
17 its forces was not accented by the central military
18 authorities (Ex. 2584-A, T. 22,110 (see par. 5 below).

19 Note: (5) According to ITAGAKI (Ex 3316),
20 the Kwantung Army, without getting assistance from the
21 central authorities since the previous year, mapped out
22 a plan of operations, in case of collision, to concen-
23 trate its main force for the delivery of a heavy blow
24 to the nucleus of the Chinese army in Mukden and to
25 make up the shortcomings of the fighting power by

1 utilizing whatever material which could be found in
2 Manchuria, such as appropriating two guns which became
3 needless as the result of scaling down of the fortifi-
4 cations at Port Arthur. Commander HONJO strictly warned
5 the officers and men against any rash act, but at the
6 same time instructed them to execute their duties pos-
7 itively and decidedly once emergency arose (T. 30,259 -
8 39,260). ISHIHARA testified: "Diplomatic negotiations
9 should always be conducted in a conciliatory attitude.
10 However, as far as we military men were concerned, it
11 is our duty to see that if the things should come to the
12 worst, we should be prepared for any eventuality."
13 (T. 22,197).

14 Note: (6) As to the question whether or not
15 the situation on the spot justified such preparedness
16 of the Kwantung Army, we refer to TANAKA's testimony:
17 "It was practically battle conditions, without the
18 declaration of "war" (T. 1,958; T. 2,092) and to ISHIHARA's
19 testimony: "The relation between the two forces was on
20 the verge of explosion as if sitting on top of a volcano"
21 (Ex. 2584-A, T. 22,110). If Chinese airplanes, in spite
22 of repeated Japanese protests, continued to carry out
23 demonstration flights over Japanese barracks and
24 residential houses (ISHIHARA, T. 22,147), and if the
25 Japanese railway lines, patrolled by guards 3,000 times

1 per month, were still cut down or otherwise obstructed
2 by the Chinese (KATAKURA, T. 18,887), it would have been
3 idiotic of the Kwantung Army not to be prepared for a
4 further and graver challenge, even without consider-
5 ing all the treaty violations and persecutions rampant
6 everywhere in Manchuria.

7 5. According to ITAGAKI's testimony, who was
8 then a staff officer in charge of general affairs of
9 the Kwantung Army, "the desire of the Kwantung Army to
10 increase its strength, change the disposition of its
11 troops and replete its equipment, was not approved by
12 the central authorities of the army" (Ex. 3316, T.30,258).
13 ISHIHARA, then a staff officer in charge of operations
14 of the Kwantung Army, testified: "In order to cope with
15 the threatening situation produced by the change of
16 military conditions in general in the northeastern
17 China, the Kwantung Army in the field made a proposal
18 to increase the numbers and rearrange its forces to
19 the central military authorities. However, it was
20 not accepted" (Ex. 2884-A, T. 22,110). This evidence
21 will show, together with exhibit 2202-A, MINAMI's
22 refusal of increasing the divisional strength in Korea
23 (see Part I, Par. 5, above), that the central military
24 authorities had not the slightest idea of aggression
25 towards Manchuria or anywhere else.

Note: (1) In the course of cross-examination
1 of defendant KOISO, the prosecution produced exhibit
2 3376, a letter of July 25, 1931, from MINE, Commander
3 of Military Police of the Kwantung Army, to War Minister
4 MINAMI in reference to a "Study on Organization of MP
5 Force in Manchuria", in which it is stated that in a
6 future war Japan "should secure complete possession of
7 Manchuria and Mongolia from the standpoints of mainten-
8 ance of fighting ability and of self-sufficiency", that
9 the management and administration of Manchuria and
10 Mongolia in the above case is "already being studied
11 by the respective responsible organs", that "if a
12 complete military occupation of a certain area in
13 Manchuria and Mongolia is planned in our future
14 military operations, a minimum force of about 5,000
15 military police (with the addition of some Chinese and
16 Korean military police assistants) besides a part of
17 the occupation area garrison is required in order to
18 maintain peace and order in the said area" and that
19 "the basis of this estimation approves, on the whole,
20 the Study on the Administration of the Occupied Terri-
21 tories in Manchuria and Mongolia", compiled by the
22 Kwantung Army Headquarters (T. 32,303 - 32,305).
23 It must be pointed out, first of all, that exhibit
24 3376, presented to the Tribunal by the prosecution,
25

1 forms only a minor part of the said letter of MINE
2 and that the defense had to supplement the part left
3 out by way of exhibit 3383. When the two exhibits
4 are put together, it will be clear that the purport of
5 the letter lies in the concluding paragraph of exhibit
6 3383, which reads: "We have, in the above, arrived at
7 a plan of organization in peace-time by discussing the
8 number of men required at war-time. Many aspects of
9 the present condition of MP at home and abroad will
10 not meet the demand of operation in future. The same
11 will apply to MP units in Korea and Japan proper. We
12 must, therefore, make further study and investigation
13 and prepare a satisfactory solution for the harmony
14 between the peace-time (organization) and the war-time
15 (organization)" (Ex 3383, T. 32,451). What is, then,
16 MINE's plan of organization? It proposes to establish
17 a Mukden Unit of 300 men, a Chanchun unit of 400 and
18 an Independent Battalion of 400, the Battalion to be-
19 come an educational organ for the supply of men to the
20 other two units (T. 32,448 - 32,449). Thus, 700 will
21 be in active service at Mukden and Chanchun at all
22 times while 400 be released annually in reserve. After
23 ten years, 4,000 reservists and 700 active MPs will
24 make approximately 4,700 (T. 32,450). Considering 15%
25 decrease therefrom and some addition of NCOs thereto,

1 at least more than ten years are required to supply
2 5,000 MPs, supposed to be necessary for the occupation
3 of "a certain area in Manchuria and Mongolia" as
4 mentioned in exhibit 3376 (T. 32,305). Such an idea
5 itself will obviously disprove the existence of any
6 conspiracy to create an incident in Manchuria within
7 a few months from the date of this document. Secondly,
8 according to KOISO's testimony, who was then the Chief
9 of the Military Affairs Bureau, the document does not
10 show any signature or seal of himself or the Vice-
11 Minister or the War Minister, indicating, therefore,
12 that the matter had been disposed of in the lower levels
13 and not submitted to the superiors for any advice
14 (T. 32,444 - 32,445). His recollection is that Colonel
15 ANDO, Chief of Military Service Section, told him that
16 "this was MINE's own idea and a highly fantastic one
17 and impossible of execution". Hence, "it was completely
18 shelved and abandoned by the Military Service Section"
19 (T. 32,452).

20
21 Note: (2) Putting together the evidence
22 above-mentioned, we shall arrive at the following
23 conclusions: (a) that many sundry statements of
24 opinion were sent to the central army authorities
25 from the Kwantung Army, but none was approved or
accepted, showing thereby non-existence of a common

1 plan or conspiracy between the two; (b) that such
2 statements of opinion referred sometimes to immediate
3 precautions to be taken in the face of the threatening
4 situation on the spot and sometimes to a study of the
5 occupation of Manchuria and Mongolia, in a future war,
6 but the latter contemplated only an easy-going plan
7 which, if realized, might take ten or more years, show-
8 ing thereby its remoteness from any affairs which
9 occurred in 1931; and (c) that as a matter of fact,
10 neither the policy of the central army authorities nor
11 actions of the Kwantung Army followed the line suggest-
12 ed by the said study, such as military administration
13 of Manchuria and Mongolia, showing thereby its
14 irrelevancy to the actual state of mind of any
15 "responsible organs". In any case, MINAMI cannot be
16 held responsible for all letters received and in which
17 purport he never concurred as proved by subsequent
18 events.
19

20 Note: (3) The mere fact that a letter is
21 addressed to the War Minister or found in the files of
22 the War Ministry does not mean his approval or even
23 perusal thereof. Such a crazy one as exhibit 184 (see
24 Part I, Par. 5, Note: (4) above), has been discovered
25 in the so-called secret diaries of the War Ministry.
Further, it was the routine procedure for any member

1 of the War Ministry to notify his reading or looking
2 at a document by placing his seal or signature on it
3 (KCISO, T. 32,443 - 32,444).

4 6. According to SHIDEHARA's testimony, he
5 received, shortly before the Manchurian Incident,
6 confidential reports and informations that the Kwantung
7 Army was engaged in amassing troops and bringing up
8 ammunition and material for some military purpose,
9 and knew from such reports that action of some kind
10 was contemplated by the military clique (Ex. 156,
11 T. 1,324).

12 This testimony was modified on cross-examina-
13 tion as follows: firstly, the word "report" was not
14 quite correct. What he actually meant was "rumors"
15 and he did not receive anything in the nature of an
16 official report (T. 1,333). As a matter of fact,
17 four or five civilian residents in Manchuria came to
18 him and talked about some war-like preparation being
19 done by young officers on the spot (T. 33,589 - 33,590).
20 Secondly, the words: "Kwantung Army" should be correct-
21 ed as "military clique" (T. 1,319), by which SHIDEHARA
22 did not intend to include MINAMI (T. 1,335). Thirdly,
23 SHIDEHARA talked with Premier WAKATSUKI and War
24 Minister MINAMI about such rumors, but did not take
25 any action himself (T. 1,334). MINAMI, far from

1 offering any opposition to what SHIDEHARA said, was in
2 complete agreement therewith (p. 1,385). MINAMI replied
3 "he would do his level best to maintain discipline among
4 these officers". (T. 33,592). SHIDEHARA was convinced,
5 therefore, that MINAMI did all in his power to cooperate
6 with him (T. 1,334).

7 Note: Exhibit 3739, telegraphic instruction
8 from SHIDEHARA to Consul General HAYASHI at Mukden
9 under date of September 5, 1931, states as follows:

10 "We have heard that Colonel ITAGAKI and others
11 of the Kwantung Army at your place are exerting them-
12 selves in various activities recently with considerably
13 ample funds and are manipulating Japanese adventurers
14 in China and members of the "Kokusui-Kai"; and that in
15 view of the tardy progress of the negotiation regard-
16 ing the NAKAMURA Incident, especially, they have
17 decided on some concrete move around the middle of
18 this month. We hope that it is merely a rumour. Howev-
19 er, in consideration of the appearances of excitement
20 on the part of the despatched military authorities
21 it would be very regrettable from the point of the
22 general situation, if they ruin the position of the
23 Empire by behaving rashly, therefore, please take
24 further deliberate steps for controlling the activities
25 of the Ronin /T.N. adventurers/ and the like. We have

1 conveyed the gist of this telegram to the army also."
2 (T. 37,315 - 37,316). This corroborates SHIDEHARA's
3 testimony that what he received was not an official
4 report but a rumor.

5 7. According to MINAMI's testimony, he heard
6 from SHIDEHARA at a Cabinet meeting shortly before
7 September 18, 1931, of a report that something seemed
8 to be going on in Manchuria. MINAMI replied that he
9 would have the matter investigated, otherwise he would
10 not believe it (T. 19,821). He did not see Consul-
11 General HAYASHI's telegram (Ex. 181, T. 19,827).
12 Incidentally, at that time the Chief of General Staff
13 was despatching TATEKAWA, Department Chief of the
14 General Staff, to Manchuria and MINAMI availed himself
15 of the opportunity to ask TATEKAWA to investigate the
16 matter in the light of the discussion at the Cabinet
17 meeting and of the desire of the War Ministry (T. 19,821,
18 19,823), but did not give him any order or letter
19 (T. 19,825).

21 It must be remarked that exhibit 181 referred
22 to by the prosecutor on MINAMI's cross-examination
23 (T. 19,827) is a telegram from the Consul-General in
24 Mukden under date of September 19, 1931, and could have,
25 therefore, no connection with MINAMI's request to
TATEKAWA prior to September 18th. As SHIDEHARA

1 testified, there was no official report at that time,
2 but only rumors (T. 1,333, 33,589 - 33,590). Neverthe-
3 less, MINAMI acted at once for the best (T. 33,592).

4 Note: (1) MINAMI's bona fides is clearly
5 shown even in the testimony of TANAKA, Ryukichi.
6 According to TANAKA, "on the 15th or 16th of September
7 a cable was received by Foreign Minister SHIDEHARA from
8 the Japanese Consul-General in Mukden, reporting the
9 fact that a company commander of a patrol unit in
10 Fushun had said that within a week a big incident would
11 break out. Foreign Minister SHIDEHARA brought this
12 matter to the attention of War Minister MINAMI and
13 strongly protested against the report that he had on
14 hand. As a result, War Minister MINAMI ordered General
15 TATEKAWA to go to Mukden as a special emissary post
16 haste to put a stop to the contemplated action of the
17 Kwantung Army" (T. 2,006).

18 Note: (2) According to KOISO's testimony, it
19 was KANAYA, Chief of General Staff, who sent TATEKAWA
20 to Manchuria (exhibit 3375, T. 32,207). KOISO did not
21 know what kind of instructions TATEKAWA received or what
22 date he departed, but heard from NINOMIYA, Vice-Chief
23 of the General Staff, that TATEKAWA's mission was to
24 advise Commander FONJO to exercise every patience and
25 forbearance whatever might be the developments (T.32,207,

1 32,324). In the light of the situation within the army
2 and in order to thoroughly have the ideas of the Chief
3 of General Staff and the War Minister understood by the
4 people on the spot, it was necessary to despatch a per-
5 son to carry such detailed instructions (T. 32,325).

6 Note: (3) According to ITAGAKI's testimony,
7 he met and dined with TATEKAWA in the evening of the 18th.
8 TATEKAWA was not inclined to mention his business at that
9 time, except that the superiors were worrying about the
10 careless and unscrupulous conduct of the young officers.
11 ITAGAKI answered that there was no need of worrying,
12 if that was his business (ex. 3316, T. 30,261).

13 Note: (4) According to ISHIHARA's testimony,
14 he heard ITAGAKI reporting to HONJO that TATEKAWA asked
15 ITAGAKI whether the young officers were not extremely
16 excited over the NAKAMURA incident, whereupon ITAGAKI
17 replied that such was not the case. TATEKAWA said he
18 was relieved to hear so and, as he was tired, he would
19 talk about the situation the next day (T. 22,217).

21 Note: (5) According to KATAKURA's testimony,
22 he heard TATEKAWA at a meeting of staff officers of the
23 Kwantung Army on the night of the 19th, stressing that
24 the outbreak of the incident was extremely unfortunate
25 and regrettable and that no matter what the Chinese did
or might do, the Kwantung Army should not move its

forces into northern Manchuria (T. 18,905, 18,907).

1 The above event took place more than sixteen
2 years ago and at the time when more important matters
3 accumulated daily. It is only natural that recollections
4 of witnesses differ in some detail, but they are all in
5 accord with the main point that MINAMI did his best, in
6 line with the Government policy of that date, to prevent
7 trouble from arising or developing in Manchuria.
8

9 8. Concerning events prior to the Mukden
10 Incident, the prosecution introduced three excerpts
11 from the so-called HARADA Memoirs. The first is
12 exhibit 3755-A, as "relating to August 23, 1931, and a
13 conversation between MINAMI and Railway Minister EGI,
14 which MINAMI, at page 19,825 - 19,826, said he did not
15 remember at all" (T. 37,568). It is quite natural that
16 he could not recall such a nebulous conversation, even
17 if it did take place as HARADA reported. We cannot
18 understand whom EGI was referring to when he said:
19 "It is outrageous to speak of such things as an expedi-
20 tion to Manchuria - Mongolia, etc." We are certain
21 that it was not MINAMI, because EGI asked him: "Just
22 what is your opinion on this?" If MINAMI "only made
23 very obscure replies on the matter of UGAKI," we may
24 well imagine he could not help it in view of the con-
25 fused questions (T. 37,570).

1 The prosecution next offered exhibit 3756-A of
2 September 4, 1931; as contradicting MINAMI's statement
3 at pages 19,826 - 19,827, which denied the conversation
4 with Finance Minister INOUE (T. 37,570). As a matter of
5 fact, what MINAMI said at page 19,826 is as follows:
6 "Yes, I have frequently discussed matters with Finance
7 Minister INOUE, including the reorganization or reform
8 of the army." And at page 19,827, referring to KOISO's
9 criticism: "No, that is not in my recollection at all."
10 In any case, even HARADA's report shows that MINAMI was
11 in complete accord with INOUE on the plan of armament
12 reduction (T. 37,572), the fact which is corroborated
13 by WAKATSUKI as follows: "As War Minister MINAMI always
14 came to Cabinet meetings and never raised any objection
15 to policies decided by the Cabinet, I do not believe
16 that War Minister MINAMI did anything in opposition
17 to the policy of the Cabinet" (T. 1,583).

18 Thirdly, the prosecution produced exhibit 3757-A
19 of September 14, 1931, and alleged as follows: "at
20 Record pages 19,821 - 19,825, MINAMI, while admitting
21 that TATEKAWA was sent to Mukden by the General Staff
22 and that he had talked with him before he went, denied
23 that he or as far as he knew, KOISO had anything to do
24 with his selection or that he entrusted TATEKAWA with
25 a letter or order from the Emperor or anybody else.

1 He said he was merely sent to investigate" (T. 37,574).
2 "We do not consider the points raised by the prosecution
3 as important, for even according to HARADA, it is
4 apparent that MINAMI tried "to take extra precautions
5 in regard to the actions of the Army in Manchuria and
6 Mongolia" and that by his effort the attitude of "the
7 so-called War Councillors, representing the Supreme
8 leaders of the Army" changed completely (T. 37,575 - "n
9 37,576).

10 On the whole, we must say that the HARADA
11 Memoirs contain only rumors and gossips of less
12 reliability than newspaper reports. We demonstrate
13 the fallacy of each and every one of HARADA's informa-
14 tions, so far as MINAMI is concerned, in the notes below.

15 Note: (1) Ex. 3757-B (September 19, 1931):
16 HARADA's allegation, that Premier WAKATSUKI received
17 no reports from MINAMI and that the Army authorities
18 were desirous of making a guarantee occupation
19 (T. 37,577 - 37,578), is completely refuted by exhibit
20 179-I, KIDO's Diary, entry of September 19th, which
21 reads: "At 1:30 the Prime Minister went to see the
22 Emperor. I was told that our Army would not try to
23 enlarge the situation but would stop any further
24 action when it found itself in an advantageous position"
25 (T. 1,936), and by exhibit 179-J, entry of September

22nd, which reads: "The Emperor has expressed satisfaction and approval to the Prime Minister and the Minister of War for the governmental policy to strive not to extend further the Manchurian Incident" (T. 1,938). See also Section 2, par. 1 below (in particular, Note (4)). Further, we cannot understand whom HARADA was referring to when he quoted TAKATSUKI's words: "I asked what they intended doing if . . . something should possibly happen against such a huge opposing force, to which the reply was . . ." (T. 37,578). There is no evidence to show who was asked and who made the reply. Supposing it was MINAMI who made the reply, such a supposition is definitely refuted by exhibit 3422-A, telegram of September 19th, from HAYASHI to HONJO, reporting the forceful suspension by the central army authorities of the intended expedition of the Korean Army (T. 32,833). The stop order was issued to HAYASHI through KANAYA upon MINAMI's request (see Section 3, par. 1 below).

Note: (2) Exhibit 3758-A (September 22, 1931): The whole story therein described by HARADA (T. 37579 - 37,582) is refuted by much evidence shown in Section 3, par. 2. In particular, SHIDEHARA testified that he does not remember any occasion at all of MINAMI expressing a desire in the Cabinet that he should have permission to send troops from Korea into Manchuria

1 (T. 33,636). HARADA was also mistaken in saying that
2 the Cabinet meeting of the 23rd decided the defrayal
3 of expenses, etc., and that the Premier was compelled
4 to report exactly what had happened to His Majesty and
5 after that the War Minister and the Chief of the General
6 Staff presented themselves (T. 37,581). There is no
7 doubt that the Korean Army crossed the border on the
8 21st and the Imperial Sanction was granted on the 22nd
9 (Ex. 3423, KANAYA's advice to MINAMI that the Imperial
10 Sanction was already delivered to HAYASHI and HONJO
11 under date of the 22nd). It is obvious, therefore,
12 that the said Cabinet meeting took place on the 22nd
13 and that there was no reason for MINAMI to present
14 himself before the Throne on this matter (see Section
15 3, par. 3, Notes (1) - (4) below).

16
17 Note: (3) Exhibit 3759-A (September 30, 1931):
18 HARADA's hearsay (T. 37,587) is refuted by exhibit
19 3422-H, MINAMI's telegraphic instruction to HONJO of
20 September 24th, not to use military force in Chientao,
21 even if the condition became serious (T. 32,841, see
22 Section 4, par. 3, Note (4) below).

23 Note: (4) Exhibit 3760-A (October 1st, 1931):
24 HARADA's hearsay (T. 37,589 - 37,590) is refuted not
25 only by SPIDEHARA's testimony (T. 33,656 - 33,658),
but by exhibit 3422-I (telegram of September 25th from

1 MINAMI to HONJO) (T. 32,844); exhibit 286 (telegram of
2 November 1st from SHIDEHARA to KUWAHARA, T. 4,355 -
3 4,359, language corrections at T. 36,164 - 36,165);
4 exhibit 299 (telegram of November 15th from MINAMI to
5 HONJO, T. 4,391 - 4,393); and exhibit 3433 (affidavit
6 of Patrick J. Hurley), all of which deny conclusively
7 such an allegation as MINAMI ever proposed the secession
8 from the League of Nations (see Part I, par. 6; Part II,
9 section 4, par. 4, 11 and 13).

10 Note: (5) Exhibit 3761-A (October 22nd, 1931):
11 HARADA's hearsay (T. 37,591 - 37,592) is refuted by the
12 same evidence as referred to in Note (4).

13 Note: (6) Exhibit 3779-A (November 30, 1935):
14 This story of HARADA shows MINAMI's resolution not to
15 despatch troops beyond the border of Manchukuo without
16 an Imperial Command (T. 37,674 - 37,675); and that is
17 all there is to it (see section 6 below).
18

19 Section 2. The Mukden Incident.

20 1. It is alleged by the prosecution: "At
21 the time of the Mukden Incident the accused MINAMI was
22 War Minister. He claimed to know nothing of the
23 activities of the Kwantung Army and the troops from
24 Korea who were spreading over Manchuria. He claimed
25 he could not control them. It is significant, however,

1 that no action to control the supply of money, material
2 or reinforcements to those armies was undertaken by
3 MINAMI" (Mr. Williams, T. 16,733 - 16,734).

4 It is true that MINAMI knew nothing about the
5 Mukden Incident until he was suddenly awakened at about
6 3 a.m. on September 19th by an officer on duty in the
7 War Ministry and handed a telegram from the Special
8 Service Organ in Mukden (Ex. 2435, T. 19,770 - 19,780).
9 But when he realized what happened he at once called
10 his subordinates for conference, reported the matter
11 by telephone to Premier WAKATSUKI, Foreign Minister
12 SHIDEHARA and others, requesting the immediate convening
13 of an extraordinary Cabinet Meeting (T. 19,780), and
14 sent KOISO, Chief of Military Affairs Bureau, to the
15 General Staff for liaison (T. 19,780 - 19,781). The
16 opinion of the General Staff strongly favored the
17 despatch of reinforcements for operational reasons
18 and it took some time before the two parties came to
19 an agreement, deciding upon the policy of non-expansion
20 (T. 19,781).
21

22 Note: (1) According to MINAMI's testimony,
23 what they feared more than anything else was "whether or
24 not the lengthy railway line, the 200,000 Japanese
25 residents and 1,000,000 Koreans in Manchuria could be
protected with the small Kwantung Army of 10,000 men

1 in the face of the formidable army of Chang Hsueh-liang
2 numbering 250,000. If an incident similar to the
3 Nikolaievsk Incident, involving the massacre of
4 several hundreds of Japanese residents in Nikolaievsk
5 by Russians in 1920, were to be repeated, it would be
6 a serious matter and the army would be charged for
7 negligence in the proper performance of its duties
8 to the people" (T. 19,781).

9 In the face of the telegraphic reports from
10 Mukden, saying that Chinese troops destroyed the South
11 Manchurian Railway lines, attacked the guards, and
12 clashed with garrison troops (exhibit 3421-A, T. 32,826)
13 and in view of the acute situation prevailing in Manchur-
14 ia as well as traditional atrocities committed by Chinese
15 soldiers and bandits, who could blame the army author-
16 ities, even if they decided to despatch reinforcements
17 there and then? ISHIHARA testified: "Reports reaching
18 us from the front line must be accepted as of the
19 greatest accuracy. When a war is actually in progress
20 it is not given to us to investigate further than
21 actual reports which we may receive from the front line"
22 (T. 22,220), and "there was no necessity to verify"
23 such reports (T. 22,226). It was a question of life
24 and death for a million Japanese and Koreans and the
25 officers on the spot had to decide without a moment's

hesitation. But MINAMI, as a Cabinet Minister, was far
1 more cautious, and not only upheld the policy of non-
2 expansion from the beginning (KOISO, Ex. 3375, T. 32,216;
3 KAWABE, Ex. 2408, T. 19,412) but sent ANDO, Chief of
4 Military Service Section, to Manchuria to make a thor-
5 ough investigation as to the cause of the Incident
6 (MINAMI, T. 19,830).

Note: (2) ANDO arrived at Mukden on September
8 22nd (KATAKURA, T. 18,930, T. 19,089) and after a thor-
9 ough investigation on the spot, left for Tokyo on
10 September 27th (T. 18,940 - 18,941). At the extraordinary
11 Cabinet meeting held in the morning of the 19th, the
12 policy submitted by MINAMI was adopted unanimously.
13 Premier WAKATSUKI and Chief of General Staff KANAYA
14 in turn reported the decision to the Throne and obtained
15 the Imperial Sanction (Ex. 2435, T. 19,781).

Note: (3) According to SHIDEHARA's testimony,
18 he received a telegram from Consul-General HAYASHI at
19 Mukden referring to the explosion of the railway by
20 the Chinese troops and their clash with the Japanese
21 garrison, the telegram, which he read at the Cabinet
22 meeting, was similar to the one received by MINAMI
23 from the Kwantung Army. As these reports were very
24 brief, the situation was too obscure for the Government
25 to make any judgment at that time (Ex. 3479-A, T. 33,550).

1 MINAMI did not know of the Incident and stated that he
2 would investigate the matter and make a written report,
3 which was, in fact, submitted on September 20th to the
4 Cabinet. MINAMI gave proper instructions to his sub-
5 ordinates in accordance with the non-expansion policy
6 of the Cabinet, although "the Cabinet had no authority
7 to give orders to the War Minister" (T. 1,388 - 1,389).
8 Notwithstanding the fact that SHIDEHARA received reports
9 from Japanese consuls in Manchuria concerning the move-
10 ments of the Kwantung Army both before and after such
11 movements were taken (T. 1,375 - 1,376), he had no
12 direct means of investigating the Incident and, there-
13 fore, the only information obtainable came through the
14 War Minister's report (T. 1,338). It was on this basis
15 that the Japanese report was made to the League of
16 Nations. "Very honestly speaking", the Cabinet by
17 no means had any idea of territorial expansion, and the
18 Governmental proclamation of September 24th was issued
19 accordingly (T. 1,339). As a matter of fact, it was
20 MINAMI who first "declared that the central army author-
21 ities (the General Staff and the War Ministry) should
22 make every effort to prevent the expansion of the
23 Incident, although the action of the Kwantung Army
24 originated from its proper aim of guarding the railway."
25 (Ex. 3479-A, T. 33,551).

1 Note: (4) In the above testimony, SHIDEHARA
2 forgot that the army authorities had decided upon the
3 non-expansion policy as early as 9 a.m. of the 19th
4 (KAWABE, Ex. 2408, T. 19,411) and the Cabinet meeting
5 held one hour later only approved it. Exhibit 189, the
6 Governmental proclamation above referred to by SHIDE-
7 HARA, expressly states: "The Japanese Government at a
8 special Cabinet meeting September 19th took decision
9 that all possible efforts should be made to prevent
10 aggravation of the situation and instructions to that
11 effect were given to the Commander of the Manchurian
12 garrison" (T. 2,243). According to WAKATSUKI, "the
13 Cabinet . . . expressed the desire to the aforesaid
14 War Minister MINAMI that the affair be terminated at
15 once. To this the aforesaid General MINAMI agreed"
16 (Ex. 162, T. 1,554 - 1,555). This does not show the
17 true picture which MINAMI played in the Cabinet meet-
18 ing of the 19th, for decision on his part had already
19 been made to limit the incident, to which decision the
20 Cabinet gave approval.
21

22 2. It must be pointed out in this connection
23 that the central army authorities decided upon the non-
24 expansion policy, not because they thought that the
25 Kwantung Army exceeded the limit of self-defense, or
was doing anything wrong, but because MINAMI's sincere

1 desire for peace and KANAYA's study of the Chinese
2 attitude brought them to this conclusion. Exhibit
3 3421-A quotes MIKAMI's telegraphic instructions to
4 HONJO as follows: "Referring to the recent clash
5 between Japanese and Chinese troops, the Imperial
6 Government decided to make every effort to avoid ex-
7 tension of the situation, even though the Chinese troops
8 must be blamed for producing its cause by destroying the
9 South Manchurian Railway lines. The Cabinet requests
10 you, therefore, to act in accordance with this principle"
11 (T. 32,826). The telegraphic order of Chief of General
12 Staff KANAYA is quoted as follows: "In view of the
13 Chinese attitude, etc., since the outbreak of the
14 incident, the Cabinet has decided not to go beyond what
15 is necessary in dealing with the incident. The Army
16 should, therefore, conform with this principle in its
17 action" (T. 32,827).

19 Note: (1) The use of words in the two tele-
20 grams clearly denotes the fact that the War Minister
21 could only request the Kwantung Army to refrain from
22 further actions while the Chief of General Staff had
23 the authority to so order.

24 Note: (2) "From this time on the military
25 operations of the army on the spot came under the
jurisdiction of the Chief of the Army General Staff as

1 an exercise of the prerogative of the Supreme Command"
2 (MINAMI, Ex. 2435, T. 19,782).

3 Note: (3) According to UGAKI's testimony,
4 the military movements and actions overseas came under
5 the command of the Chief of General Staff, who held the
6 highest position next to the Emperor himself as regards
7 the supreme Command (T. 1,620 - 1,623).

8 Note: (4) It is clearly stated in the
9 Regulations of the General Staff Office (Ex. 78) as
10 follows:

11 "Art. 1. The General Staff Office is the
12 place to supervise national defense and logistics.

13 "Art. 2. A general or a lieutenant-general
14 is appointed by the Emperor to the post of the Chief of
15 the General Staff, and is placed under the direct
16 command of the Emperor, attends the war council, takes
17 charge of the formation of plans for national defense
18 and strategy, and supervises the General Staff Office.

19 "Art. 3. The Chief of the General Staff super-
20 vises those military officers who occupy the posts of
21 staffs, and takes charge of their education and
22 superintends the Military Staff College and the Land
23 Survey Department" (T. 19,509 - 19,510). On the other
24 hand, the Regulations governing the Organization of
25

the War Ministry (Ex. 74) reads as follows:

1 "Art. 1. The War Minister supervises the
2 military administration of the Army, leads and controls
3 officers and civilians in the military service, and
4 superintends various departments under his charge"
5 (T. 17,487).
6

7 Note: (5) According to TOJO's testimony,
8 "the War Minister controls officers, soldiers and
9 civilians attached to the army, that is, he supervises
10 the status of the officers and men and civilians in the
11 field. However, responsibility for any acts done by
12 officers and men or civilian employees of the army
13 after they have been organized and placed under the
14 supervision and control of the high command falls under
15 the responsibility of the high command, that is to say,
16 the Chief of the General Staff." (T. 36,819).
17

18 3. According to the prosecution's allegation:
19 "That the Mukden Incident was a planned one is shown
20 not only by the evidence concerning the plot to which
21 reference has already been made (see Note I below), but
22 is also strongly indicated by the written report of the
23 League of Nations Committee, the testimony of the witness
24 John B. Powell, the report of Consul General HAYASHI
25 to Foreign Minister SHIDEHARA, and the testimony of

the witness MORISHIMA" (Mr. Williams, T. 16,733).

1 Note: (1) The prosecution quotes exhibit
2 2182-A, excerpt from OKAWA's book, published on
3 August 20, 1943; exhibit 177, excerpt from HASHIMOTO's
4 book, published in 1936; exhibit 2177-A and exhibit
5 2178-B, excerpt from the records of OKAWA's trial
6 in 1934; and exhibit 186, a report of the Japan Times
7 on MINAMI's speech in August, 1931 (Mr. Williams,
8 T. 16,727 - 16,733), as "the evidence concerning the
9 plot". They are, however, nothing but opinions and
10 hearsay and do not show any alleged connection or
11 alleged complicity in the alleged plot by MINAMI.
12

13 Note: (2) The Lytton Report (Ex. 57) sets
14 forth both Japanese and Chinese versions and does
15 "not exclude the hypothesis that the officers on the
16 spot might have thought they were acting in self-defense"
17 (T. 1,798). The Lytton Commission arrived at Tokyo in
18 February, 1932, stayed in Manchuria only for six weeks
19 and undertook the drafting of the Report at Peiping
20 after July, 1932 (Ex 57 (pp. 10-12)). The Report
21 refers vaguely to MINAMI's "vigorous speeches" without
22 any support of evidence (see Part I, Par. 6, above).
23

24 Note: (3) With regard to Powell's testimony,
25 the President remarked: "Apart altogether from the

1 reference to atrocities, this witness has given a
2 number of details which might have led somewhere but
3 which amounted to nothing" (T. 3,222). "You understand,
4 the world heard these allegations. We are here to get
5 the evidence that supports the allegations and you
6 are giving us the allegations over again" (T. 3,224).

7 Note: (4) As to TANAKA's statement that
8 "the Mukden Incident was a planned incident" (T. 1,965)
9 and OKADA's statement that "the plot for the Manchurian
10 Incident was carried out by several younger officers
11 of the Kwantung Army" (T. 1,915 - 1,916), they are all
12 hearsay, gathered some years after the event.

13 Among the prosecution evidence above mentioned,
14 the only ones worth considering will be the three
15 telegrams of HAYASHI on September 19, 1931, and the
16 testimony of MORISHIMA on account of the positions
17 which they held at the time in question.

18
19 4. Exhibit 181 (the first telegram of HAYASHI)
20 reports: (a) TATEKAWA's arrival at Mukden on the
21 18th by 1 p.m. train; (b) KIMURA's talk that the
22 army authorities forbade trackmen's approach to the
23 spot of explosion; and (c) HAYASHI's observation that
24 the recent incident was wholly an action planned by
25 the Army (T. 2,198 - 2,199). We have already dealt

1 with the question of TATEKAWA's trip to Manchuria (Part
2 II, Section 1, par. 7 above). The testimony of MORISHIMA
3 that TATEKAWA was traveling "secretly" in civilian
4 clothes (T. 3,019 - 3,020) does not amount to anything,
5 in view of the testimony of KATAKURA that "it was as a
6 matter of custom to travel outside of the railway zone
7 in Chinese or in civilian clothes (T. 18,887). As to
8 the talk of KIMURA (a director of the South Manchurian
9 Railway), it would be quite natural for the army author-
10 ities to take such a precautionary measure since the
11 fighting in the neighborhood did not cease at least
12 until 7 a.m. of the 19th, according to the Chinese
13 version (Ex. 57, p.70).

14 Now, HAYASHI's observation on the incident was
15 certainly a serious charge against the Kwantung Army,
16 although he had apparently no evidence thereof other
17 than those stated in MORISHIMA's testimony, i.e.,
18 that the Army had moved a large gun from Hai-chang
19 to the Infantry barracks in Mukden and that the Army
20 in Fushun had planned a maneuver which contemplated
21 the occupation of Mukden, leaving Fushun at 11:30 p.m.
22 the night of September 18th (Ex. 245, T. 3,019 - 3,020).
23 SHIDEHARA must have discussed this matter with MINAMI,
24 for Colonel ANDO was immediately dispatched to
25 Manchuria to make a thorough investigation (see section

1 2, par. 2, Note (2) above).

2 Note: (1) MINAMI testified that SHIDEHARA
3 kept him informed from time to time of the reports
4 received from the Consuls in Manchuria and China
5 (T. 19,821). But the discussion was made in a more
6 or less informal round-table fashion, SHIDEHARA asking:
7 "Now, what do you think about it?", without showing
8 any telegram (T. 19,828). MINAMI did not see HAYASHI's
9 telegram, exhibit 181 (T. 19,827).

10 Note: (2) MINAMI testified that it was only
11 after the outbreak of the Incident and after he had the
12 incident investigated by ANDO that he learned for the
13 first time of the installation of the artillery
14 (T. 19,875 - 19,876). These two guns had been at Port
15 Arthur for a long time since the Russo-Japanese War
16 (T. 19,877).

17 Note: (3) ISHIHARA testified that the mount-
18 ing of the two guns was a matter that had been decided
19 back in 1929 before Colonel ITAGAKI came (T. 22,186).
20 It was ordered by Commander HISHIKARI (T. 22,185). See
21 also ITAGAKI's testimony (Section 1, par. 4, Note (5)
22 above).

23 Note: (4) ISHIHARA testified that in August,
24 1931, after the arrival of HONJO as Commander, a new
25 plan was set up as to the seizure of air fields and the

2

1 Mukden arsenal in case of emergency and the company
2 stationed at Fushun was assigned to take part therein.
3 KAWAKAMI, Captain of the company, was to leave for
4 Mukden on September 18th, notifying this plan to the
5 police and ex-service men. This report was sent to
6 the Foreign Office and caused a considerable embarrass-
7 ment to the Army. KAWAKAMI's date of September 18th
8 was purely a coincidence and, as a matter of fact,
9 when the incident actually broke out on that day,
10 KAWAKAMI, forgetting to attack the airfield in accord-
11 ance with this defense-plan, rushed to Mukden with his
12 forces in a very incomplete state of armament (T. 22,140-
13 22,142; T. 22,232 - 22,234).

14 Note: (5) KATAKURA testified that the South
15 Manchurian Railway officials were much surprised when
16 they heard a remark of KAWAKAMI that on or about
17 September 16th or 17th a very acute situation might
18 result, depending upon the Chinese move on the return
19 of an investigation squad, referring to the NAKAMURA
20 case. On personal inquiry by one of the South Manchur-
21 ian Railway directors, it was learned that there was
22 nothing in the offing. Consul-General HAYASHI, however,
23 sent a letter to HONJO and also reported to Tokyo,
24 exaggerating KAWAKAMI's alleged remarks and actions.
25

On September 20th, MIYAKE, Chief of Staff, and KATAKURA
1 called on HAYASHI, to whom the matter was fully
2 explained (T. 18,833).

3 5. Exhibit 181, Part I, and exhibit 2193 (the
4 second telegram of HAYASHI) reports: (a) HAYASHI's
5 telephone talk to an officer, presumably ITAGAKI, urging
6 the matter be handled through diplomatic channels, be-
7 cause of the Chinese proposal of non-resistance; and
8 (b) the officer's reply as to the Army's intention of
9 seeing it through, because of the Chinese attack on
10 the Japanese Army (T. 2,179 - 2,180; T. 15,735 -
11 15,736; MORI-HIMA, Ex. 245, T. 3,021 - 3,022). It may
12 be true that HAYASHI believed in the Chinese non-resist-
13 ance, but the same will be said with regard to the
14 officer's belief of the Chinese attack. However,
15 KANAYA's telegraphic order of September 19th shows
16 that the General Staff was not unaware of the Chinese
17 attitude (Ex. 3421-A, T. 32,827; see section 2, par. 2
18 above).
19

20 Note: (1) According to ITAGAKI's testimony,
21 he told HAYASHI that the incident was different from
22 its predecessors, because the regular Chinese Army
23 challenged the Japanese Army and, as the fighting was
24 already under way, it was impossible for the present
25 to separate them. Chao Hsin-Po, who announced the

1 proposal, was a civilian official, having no apparent
2 influence in military affairs, and the proposal itself
3 was susceptible of being a Chinese trick due to such
4 suspicious circumstances (T. 30,265-30,266; KATAKURA,
5 T. 18,935).

6 Exhibit 181, Part 2 (the third telegram of
7 HAYASHI), reports: (a) the planning of the Army to
8 start positive operations simultaneously throughout
9 the various places along the South Manchurian Railway
10 zone; (b) HAYASHI's effort of calling HONJO's attention
11 through UCHIDA, President of the South Manchurian Rail-
12 way; and (c) HAYASHI's desire that the Government would
13 take necessary steps to stop the Army's action (T.2,183).
14 It must be noted, however, that the central army author-
15 ities already decided upon the non-expansion policy
16 at 9 a.m. the morning of the 19th (KAWABE, Ex. 2408,
17 T. 19,411; MINAMI, Ex. 2435, T. 19,781; KOISO,
18 Ex. 3375, T. 32,216 - 32,217). This fact will show
19 that they were not influenced by HAYASHI's reports in
20 arriving at the aforesaid decision and that their
21 intention to localize the incident must have been
22 sincere.
23

24 Note: (2) The fact that the central army
25 authorities were sincerely resolved to limit the
actions of the Kwantung Army within the scope of

1 legitimate self-defense will be proved, among others,
2 by exhibit 3421-A, telegrams of September 19, 1931
3 to HONJO from MINAMI and KANAYA (see Section 2; par. 2
4 above). Because of this sincerity, the General Staff
5 was exasperated by HAYASHI's reports such as the
6 above-mentioned. Exhibit 3422-B, telegram of September
7 20th, from NINOMIYA, Vice-Chief of General Staff, to
8 MIYAKI, Chief of Staff of Kwantung Army, says:

9 (a) the General Staff agreed to the Cabinet policy
10 of non-expansion; (b) but the Kwantung Army would not
11 be restricted in taking necessary actions for self-
12 defense; (c) attention should be paid not to give any
13 cause for reproach upon the Army; and (d) the source
14 of rumors should be investigated and unpatriotic acts
15 be eliminated (T. 32,535 - 32,536).

16
17 6. The fact that MINAMI sent ANDO (Chief of
18 Military Service Section of the War Ministry to
19 investigate on the spot the serious charge above
20 mentioned is corroborated by the testimony of KATAKURA,
21 who states that ANDO made inquiries on the following
22 four questions, i.e., (a) referring to the Fushun
23 company case; (b) referring to the non-resistance
24 of the Chinese troops; (c) referring to the offensive
25 attitude of ITAGAKI to HAYASHI; and (d) referring to
the swift action and preparedness of the Kwantung Army

1 . . . 18,931 - 18,932).

2 As to the Fushun case, besides the testimonies
3 of ISHIFARA and KATAKURA (see Section 2, par. 4,
4 notes (4) and (5) above), Ex. 3422-E (telegram of
5 September 23rd from MIYAKE, Chief of Staff, Kwantung
6 Army, to SUGIYAMA, Vice-Minister of War, and NINOMIYA,
7 Vice-Chief of General Staff), shows the Kwantung Army's
8 assurance to the central authorities (a) that they
9 should have no anxiety whatsoever as the incident had
10 absolutely no connection with the Fushun case, reported
11 by Consul-General HAYASHI to Foreign Minister SHIDEHARA;
12 and (b) that details had been explained to ANDO . .
13 (T. 32,839).

14 As to the Chinese non-resistance, HONJO asked
15 ANDO to see personally the actual scene of the fight-
16 ing, submitting to him also a report of an investigation
17 on the spot, conducted by OYAMA (Chief of Legal Affairs
18 Section, Kwantung Army) and others (KATAKURA, T. 18,935-
19 18,940; OYAMA, Ex. 2423, T. 19,617 - 19,628).

20 As to ITAGAKI's attitude towards HAYASHI,
21 ITAGAKI himself, in the presence of HONJO, made an
22 explanation to ANDO (KATAKURA, T. 18,938).

23 As to the swift action of the Kwantung Army,
24 exhibit 2403, HONJO's written statement in anticipation
25 of his death, describes the situation as follows:

"Receiving an urgent dispatch . . . I immediately

1 issued the necessary order to the forces under my com-
2 mand stationed at various points to use force. This
3 was done without having enough time to ask instructions
4 from headquarters" (T. 19,258). ". . . it was evident
5 that not only the South Manchurian Railway but also
6 our army, residents and interests would have been ruined
7 if the army had idly hesitated. This was the reason
8 why I issued to the units under my control orders to
9 use force without asking for instructions from head-
10 quarters, with the responsibility and right which had
11 been naturally given to me". He believed that no
12 matter what country it might belong to, this was in
13 keeping with the character of any army inferior in
14 strength called upon to defend itself against a far
15 superior force (T. 19,261).

16 Note: (1) MINAMI testified that a commander
17 of the Kwantung Army had the privilege to take any
18 action he saw fit within the scope of his authority
19 or within the jurisdiction of his own area and had had
20 it for over 25 years (Ex. 2207-A, T. 15,785 - 15,786;
21 T. 19,832).

22 Note: (2) KATAKURA testified that in view
23 of the inferior strength of the Kwantung Army, a care-
24 ful operational planning and a high degree of training
25 existed, but as a matter of fact, the attitude of the

1 Commander had twice changed and the movements of
2 troops would not be carried out as desired (T. 18,939),
3 and that the action, taken by the Kwantung Army at the
4 outbreak of the Incident, came as a result of the
5 personal decision of Commander HONJO (T. 19,086).
6 There was no instruction from Tokyo in advance or previous
7 to the Incident (T. 19,087).

8 Note: (3) According to ISHIHARA's testimony
9 (Ex. 2584), HONJO, though a man of mild character,
10 used to take a wide view of things, to take the whole
11 responsibility for his duties abroad, and to issue
12 orders or point out the general principles (T. 22,126 -
13 22,127). The Kwantung Army often did not hesitate to
14 make positive suggestions to the central authorities
15 and sometimes had heated arguments with them, but it
16 had never acted against an Imperial order or instruction
17 so long as the Supreme Command was involved. The
18 actions taken by HONJO without asking instructions from
19 the central authorities were the following two:
20 (a) The movement of the main forces of the Kwantung
21 Army at the sudden outbreak of the Mukden Incident, and
22 (b) The bombing of Chinchow on October 8th (T. 22,127).
23 ISHIHARA regrets, however, that there were very many
24 points on which the actions taken by the Kwantung Army
25 did not coincide with the policies of the central

1 authorities (T. 22,149).

2 Amidst an atmosphere of perturbation and
3 anxiety created by anti-Japanese activities, a single
4 spark would suffice to bring about the entire conflagration (Section 1, par. 4, Note (6) above). As the
5 news of the clash at Mukden flashed through the South
6 Manchurian Railway line, every single soldier in the
7 railway garrison felt simultaneously that, in order
8 to forestall imminent disaster for him and for his
9 compatriots, the opponents must be swiftly halted and
10 disarmed before they completed setting their huge war
11 machine in motion. Such was a natural and instinctive
12 reaction of one who had been, for a long time, subjected
13 to an apprehension of danger under the persistent manifestation of malice on the Chinese side (see Section 1,
14 par. 2, Notes (2) and (3); Ex. 57 (p. 30), Ex. 2396 and
15 Ex. 2397 (T. 10,210-19,214). It was to ward off the
16 menacing blow that the Japanese acted swiftly. No
17 thought of conquest or aggression could have entered
18 in his mind at that moment. HONJO's order to use
19 force without asking for instructions from the General
20 Staff headquarters was based on this honest belief of
21 self-defense, in which belief there was, in fact, no
22 difference between the Commander and his men.

23 Note: (4) ISHIHARA believes that especially
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1 the enlisted men who actually participated in guard
2 duty were keenly aware of the situation (T. 22,200).

3 7. In connection with the above, MINAMI
4 testified: "I thought that the action taken at the
5 outbreak of the Incident was not a treaty violation
6 but an unavoidable exercise of the right of self-defense.
7 After it expanded, that is another question; but I still
8 so believe now" (T. 19,883). That is why he approved
9 of the action which HONJO took (Ex. 2207, T. 15,786;
10 T. 19,918) and also why he exerted his utmost to
11 have HONJO follow the policy of non-expansion and
12 non-aggravation (T. 19,834).

13 "HONJO was under the Minister of War in
14 connection with the matters pertaining to military
15 administration. But with respect to operations and
16 disposal of troops, he was under the command of the
17 Chief of the General Staff" (T. 19,917). The War
18 Minister was not a superior officer to the Commander,
19 but he had the right to take part in the disposition
20 of matters with regard to personnel, discipline, morals
21 and expenditures (T. 20,054). Although the War
22 Minister had no right to punish the Commander (T. 20,055),
23 MINAMI said he might control or restrain the latter's
24 action, in case such action was contrary to the
25 Government policy, by denying future supply (T. 20,053-
20,054) or by recalling the latter (T. 19,918;

1 T. 20,055). This was theoretical; no such authority
2 actually existed or had been practiced.

3 According to his testimony, MINAMI did not
4 take any such measure towards HONJO, because MINAMI
5 believed: (a) the Incident, being an unexpected and
6 sudden one, HONJO carried out his duties and exercised
7 the right of self-defense (T. 20,055); (b) the Kwantung
8 Army was acting, as much as possible, in accordance with
9 the Government policy (T. 20,056); (c) that Army
10 Commanders should be trusted on matters within their
11 authority to follow Government policy and that advice
12 or orders would be implicitly complied with (T. 19,916);
13 (d) the result of all investigations, conducted by
14 ANDO, HASHIMOTO, Toranosuke, SHIRAKAWA and NINOMIYA,
15 disclosed that the rumors afloat in Japan were without
16 foundation, such as, that the army on the spot was
17 ignoring the policy of the central authorities or
18 that the younger officers in the Kwantung Army were
19 treating the Commander as a robot or that ITAGAKI,
20 ISHIHARA and other staff officers were taking arbitrary
21 actions (T. 20,060 - 20,062); and (e) the military
22 situation did not permit MINAMI to do so, even if he
23 wanted to (T. 19,833). We shall discuss this question
24 further in Section 3 and 4.

25 Note: (1) According to MINAMI's testimony,

1 HONJO could do what he liked, within the scope of his
2 authority (T. 19,832), but he acted in accordance with
3 the orders of the Central authorities in so far as it
4 was possible. However, because the enemy was so large
5 in number and because they frequently made surprise
6 attacks, a situation was created wherein there could be
7 nothing but extension of hostilities. HONJO's actions
8 were done unavoidably in view of the situation in the
9 enemy camp (T. 19,833). The fact that he was acting in
10 accordance with the Government policy was recognized both
11 by the Government and by the Supreme Command (T. 20,056).

12 Note: (2) According to MINAMI's testimony,
13 he heard on or about September 20th, rumors from
14 WAKATSUKU, SHIDEHARA and others that young staff
15 officers had almost completely ignored the Commander
16 and tried to run things as they pleased (T. 19,872),
17 though he did not hear such ones as HAYASHI's life was
18 in danger, because the Army considered him an obstacle
19 (T. 19,873), or HONJO was in a state of restriction to
20 quarters, or ITAGAKI, ISHIHARA and HANAYA were the
21 center of activities in Manchuria, or the Chief of Staff
22 was unable to control them, or these three men boasted
23 that the plot was planned long ago (T. 19,873 - 19,874).
24 MINAMI also rejected these rumors (T. 19,874) as he
25 believed they were not true (T. 19,875). DOIHARA,

1 ITAGAKI and ISHIIHARA were under HONJO and all of them
2 were loyal to their duties and did not engage in any
3 activities of their own will and acted under HONJO's
4 control. It was necessary for MINAMI to supervise
5 HONJO only so far as military administration was con-
6 cerned. MINAMI theoretically could have recalled them,
7 but he did not recognize the need because of his belief
8 that they were acting in line with their original
9 authority (T. 19,918).

10 Note: (3) Exhibit 3421-A quotes the telegram
11 of the Chief of the General Staff to HONJO under date
12 of September 19th as follows: "I believe that the
13 resolutions and measures taken by the Commander of the
14 Kwantung Army since the night of September 18th are
15 appropriate to the occasion and have enhanced the prest-
16 ige of the Japanese Army" (T. 32,827).

17 Note: (4) According to MINAMI's testimony,
18 he spoke with sincerity when he told the Cabinet
19 that he was going to stop HONJO. He exerted his
20 utmost to have HONJO follow the policy of non-expansion.
21 The Kwantung Army was ordered to protect the South
22 Manchurian Railway lines and other important portions
23 along the line, but not to go north beyond Kirin,
24 Changchun or Chengchiatun, or west of the Liao River
25 (T. 19,834).

Note: (5) According to SHIDEHARA's testimony,
1 to stop financial supplies to the Kwantung Army was not
2 discussed at any Cabinet Council. The budget had been
3 approved by the Diet before the Manchurian Incident
4 broke out (T. 33,633). No question of supplementary
5 budget was discussed at the Cabinet (T. 33,634). The
6 War Ministry could find ample means of expenditures
7 within the limit of the budget (T. 33,634 - 33,635).
8 The War Ministry did not ask for any further funds beyond
9 what they already had in their budget (T. 33,635). Dur-
10 ing the tenure of the Cabinet he was in, it was not
11 necessary to stop the flow of materials to the Kwantung
12 Army. They were able to do whatever they wanted to do
13 with the materials they already had on hand (T. 1,392).
14 The above statement of SHIDEHARA is not quite true to
15 the fact, for request was made of the War Ministry
16 only for a negligible amount outside the Army's normal
17 budget for expenses of troop movements as approved after
18 Imperial sanction, in conjunction with the dispatch of
19 a mixed brigade from Korea, and drawn from the Second
20 Reserve Fund (see Section 3, Par. 6 below). Original
21 action was carried out within the means on hand already
22 in possession of these armies, and later requests only
23 after Imperial sanction was given.

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25 8. It is asked by the prosecution that under
the Hague Convention III in 1907, Relative to the Open-

1 ing of Hostilities, "were the attacks without notice or
2 warning on Mukden, Changchun and Kirin on September 18,
3 1931. . . lawful acts?" (Mr. Keenan, T. 42). We submit
4 the action was as lawful as the Siberian expedition by
5 the Allied Forces in 1918, as the bombardment of
6 Nanking by British and American warships in 1927,
7 and as the raids by Soviet troops across the Manchurian
8 border in 1929.

9 Note: (1) The Allied intervention (1918-1920),
10 "in connection with the chaotic conditions rapidly
11 developing, after the Russian Revolution, in Siberia
12 and North Manchuria, had been proposed by the United
13 States of America for the double purpose of protecting
14 the vast stores of war materials and supplies accumulat-
15 ed at Vladivostok and of assisting the evacuation of
16 some 50,000 Czechoslovak troops . . ." (Ex. 57, T. 34),
17 Ex. 2319-F, T. 17,423).

18 Note: (2) SHIDEHARA testified that on March
19 24, 1927 Japanese residents in Nanking were plundered
20 and injured, that all foreign nationals in that area
21 suffered casualties and damages and that British and
22 American warships off Nanking bombarded the city for
23 one hour while Japanese warships then anchored nearby
24 did not fire a shot (T. 1,349 - 1,350).

25 Note: (3) "Raids by soviet troops across the

1 Manchurian border began and developed into a military
2 invasion in November 1929" (Ex. 57, T. 36).

3 According to MORISHIMA's testimony, China
4 and Japan never severed diplomatic relations during the
5 period of the Manchurian Incident (T. 3,104 - 3,105).
6 According to SHIDEHARA's testimony, T. V. Soong, Chinese
7 Foreign Minister, and SHIGEMITSU, Japanese Minister to
8 China, conferred together as to how the Incident could
9 be settled. The objective of their talks was to
10 localize the Incident by direct negotiation between
11 China and Japan, but "there was a disagreement within
12 the Chinese Government itself concerning this point,"
13 while "as far as Japan was concerned there was no
14 difficulty" (T. 1,373 - 1,374). According to the Lytton
15 Report, "on September 21, 1931, the representative of
16 the Chinese Government at Geneva wrote to the Secretary-
17 General of the League of Nations asking him to bring to
18 the attention of the Council the dispute between China
19 and Japan which had arisen from the events which took
20 place at Mukden on the night of September 18th-19th . . ."
21 The Council, in its resolution of September 30th, was
22 convinced that both Governments were "anxious to avoid
23 taking any action which might disturb the peace and good
24 understanding between the two nations . . ." . "On
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1 November 21st, the Japanese representative, after stat-
2 ing that his Government was anxious that the resolution
3 of September 30th should be observed in the spirit and
4 letter, proposed that a Commission of Enquiry should be
5 sent to the spot. This proposal was subsequently
6 welcomed by all the other Members of the Council . . ."
7 (Ex. 57, pp 5-6), T. 1,692 - 1,694).

8 All the above evidence will show that neither
9 China, Japan nor the League of Nations considered the
10 Mukden Incident as a war, whether declared or undeclared,
11 but only a "dispute" which the parties concerned were
12 anxious to settle as soon as possible. Even the United
13 States Government referred to China and Japan only as
14 "disputants" and wanted to "avoid any danger of embarr-
15 assing the League in the course to which it was committ-
16 ed" (Ex. 926, telegram of October 9, 1931, from Stimson
17 to Gilbert, T. 7,357). Needless to say, the Hague
18 Convention III does not apply where no animus belliger-
19 endi can be found either in the parties concerned or in
20 the objective opinions of bystanders. It is obviously
21 impossible to give a notice or warning, unless one has
22 the intention to go to war.

23 Note: (4) MINAMI testified: "The situation
24 was not a peaceful one, while it was not such as would
25 call for an open declaration of war. It was called an

1 Incident, because it was regarded that it would be
2 settled locally" (T. 19,858). However, the Manchurian
3 Incident may be regarded after all "an undeclared war"
4 (T. 19,859). As shown in Part I and section 1 of
5 Part II above), there are ample evidence that MINAMI
6 did not want to have any incident occur in Manchuria
7 and there is no evidence that he did. After the out-
8 break of the Incident, he tried his best to localize
9 it, as we shall see in the following Sections. How
10 could he be guilty of violation of a treaty or Conven-
11 tion, the compliance with which was physically or
12 humanly impossible? Furthermore, it is the Foreign
13 Minister's responsibility to give proper notice as to
14 declaring war and not that of the War Minister.

15 Section 3. The Crossing of Border
16 by the Korean Army.

17 1. Referring to the question of the Korean
18 Army's dispatch of troops to Manchuria, the evidence
19 shows that its Commander HAYASHI asked the Chief of the
20 General Staff on September 19, 1931 for permission to
21 take such a measure without delay, but a stop order
22 was communicated to him through KANAYA (MINAMI, T.
23 19,782) upon MINAMI's request (KOISO, Ex. 3375,
24 T. 32,217 - 32,218). The telegram of September 19th
25 from HAYASHI TO HONJO (Ex. 3422-A) reads: "As the Chief

1 of General Staff compelled me to suspend dispatch of
2 reinforcements in spite of my repeated statements of
3 opinion, the troops, other than the air force, are
4 temporarily stopped on the south side of Shingishu,
5 awaiting further developments of the situation" (T.32,833).
6 The expression vividly describes the impatience felt by
7 HAYASHI towards the Chief of General Staff, who firmly
8 held down his demands (KODAMA, Chief of Staff of the
9 Korean Army at that time, Ex. 3431, T. 32,874 - 32,875;
10 KAWABE, T. 19,413). Would KANAYA have been so firm
11 in his denial of HAYASHI's proposal, if MINAMI had
12 not maintained the non-expansion policy? This evidence
13 will definitely establish the fallacy of HARADA's hear-
14 say in his Memoirs of September 19, 1931 (Ex. 3757-B,
15 T. 37,578).

16 Note: (1) The air force mentioned in the
17 telegram withdrew to their base on account of the
18 inclement weather and breakdown and did not start until
19 after the Imperial Sanction was given (KODAMA, T. 32,880).
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1 On September 21, HAYASHI received a tele-
2 gram from the Kwantung Army, whereby he sent a mixed
3 brigade across the border at his own discretion, be-
4 lieving in the desperate situation of the Kwantung
5 Army. For this action, HAYASHI received an Imperial
6 reprimand issued through the Chief of the General
7 Staff, containing the words "warned for future
8 action"(KODAMA, Ex. 3431, pp. 32,877-78; MINAMI,
9 pp. 20,056). Is it not obvious from the above that
10 the whole matter was under the jurisdiction of the
11 Chief of the General Staff and the best MINAMI could
12 do was to exercise whatever influence he had with
13 the Chief of the General Staff?

14 2. On September 22, "the Cabinet
15 saw no alternative but to approve the despatch of
16 the said brigade and the defrayal of expenses accom-
17 panying such action. The Prime Minister immediately
18 reported the affair to the Emperor, the Chief of the
19 General Staff following suit, and the Imperial Order
20 for crossing the border was communicated to the
21 Korean Army by the Chief of the Army General Staff."
22 (MINAMI, Ex. 2435, p. 19,783)

24 Note: (1) Ex. 3423, letter of September
25 22 from KANAYA to MINAMI, notifying the delivery of
the Imperial Sanction to the Commanders of the Korean

1 and Kwansung Armies, shows that MINAMI was only a
2 recipient of a notice after the fact was accomplished
3 (pp. 32,833-35).

4 Note: (2) According to MINAMI's testimony,
5 he stated to the Cabinet that they might have to
6 support the application made by HAYASHI and HONJO
7 regarding reinforcements (p. 19,847) and that it
8 could not be helped (p. 19,852); but he never urged
9 in the Cabinet such a measure, to which he was
10 opposed (p. 19,843) and in respect of which he com-
11 municated to KANAYA his disapproval (p. 19,845).
12 After the act was done, MINAMI told KANAYA that it
13 was outrageous for any action to be taken without
14 the permission and approval of the government, and
15 KANAYA transmitted word to HAYASHI of his punishment
16 by the emperor. The matter was entirely that of the
17 High Command (p. 19,842). Efforts were made to stop
18 HAYASHI from sending reinforcements by way of or
19 through the Chief of the General Staff, but the War
20 Minister had no authority to give punishment upon
21 an official of the Shinin rank (p. 19,848-9, 20,056-7).

22 Note: (3) According to WAKATSUKI's testi-
23 mony, on the night of September 22, HAYASHI moved
24 his troops across the Yalu River, which fact was re-
25 ported to the Cabinet by MINAMI on September 23

1 (Obviously WAKATSUKI is mistaken about the dates
2 which should be one day earlier respectively).
3 MINAMI told the Cabinet that HAYASHI had moved
4 "without the Imperial Sanction or without authority
5 from the Cabinet or the War Minister or the Chief
6 of the General Staff," but HAYASHI had received an
7 urgent request from the Korean Army for aid and had
8 personally deemed the situation of such an urgent
9 nature that it justified peremptory action on his
10 part (Ex. 162, pp. 1,555-1,556). At no other Cabinet
11 meeting, did MINAMI bring the matter up and WAKATSUKI
12 has no recollection that MINAMI might have talked to
13 him of this at sometime or other. (p. 1,563). This
14 testimony also refutes HARADA's memoirs of September
15 19 (Ex. 3757B) and of September 22-23, 1931 (Ex.
16 3758A, pp. 37,579-37,582).

17 Note: (4) According to SHIDEHARA, he does
18 not believe that MINAMI had first proposed that re-
19 inforcements be sent from Korea. The report of such
20 reinforcement came rather as a surprise to all of
21 the Cabinet members (p. 33,635). He does not re-
22 member any occasion at all of MINAMI expressing a
23 desire in the Cabinet that he should have permission
24 to send troops from Korea into Manchuria (p. 33,636).
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Note: (5) According to MINAMI, "after the

1 outbreak of the Incident in Manchuria, an incident
2 was in existence General HAYASHI dispatched
3 troops during the Incident." (p. 19,857) That is to
4 say, the voice of the Chief of General Staff became
5 stronger and that of the War Minister less because
6 military action was involved.

7 Note: (6) SHIBAYAMA, then military adviser
8 to Chang Hsueh-liang, testified that on the evening
9 of September 19, 1931, when he visited MINAMI at
10 the War Minister's residence, MINAMI requested him
11 to orally communicate to HAYASHI that under no cir-
12 cumstances should the Korean Army be permitted to
13 cross the Yalu River into Manchuria. MINAMI entrusted
14 such a message to SHIBAYAMA, as the latter happened
15 to be leaving Tokyo on that day and the matter re-
16 quired the earliest possible attention (p. 28,634-
17 28,638). This evidence will show that MINAMI was so
18 anxious to stop HAYASHI's proposition that he availed
19 himself of any opportunity for the transmission of
20 his desire.
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3. To the prosecutor's question, why not
1 order the troops to be sent back again or why were they
2 not recalled, MINAMI replied: "Inasmuch as the despatch
3 of troops across the border had been officially recog-
4 nized by the Throne, I had no authority to prevail
5 over that permission and I couldn't do anything about
6 it on my part" (T. 19,851).
7

Note: (1) In this connection, we have to
8 point out some misleading questions by the prosecutor.
9 To quote from the transcript of April 14th, 1947:
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11 "Q. But before it was officially recognized
12 by the Throne and instead of advising the Throne
13 officially to recognize it, why not order that they
14 should be sent back?

15 "Mr. Brooks: I want to object to that ques-
16 tion. I don't believe the witness said that he offic-
17 ially advised the Throne.

18 "The President: He seems to know who did and
19 we would like to know who they were and what advice
20 they gave.

21 "A. That I do not know.

22 "Q. As a matter of fact, did not you personally
23 with the Chief of Staff see the Emperor on the even-
24 ing of the 24th of September and advise him to approve
25 of the sending of these troops?

1 "A. Absolutely not.

2 "Q. And had you not previously on the same day
3 pressed the same decision upon the Cabinet?

4 "A. No. One word, please. You said the 24th,
5 did you not?

6 "Q. Yes.

7 "A. No, nothing of the kind happened on the 24th.

8 "Q. Did it happen on some other day?

9 "A. Aside from the fact that Premier WAKATSUKI
10 and simultaneously with him the Chief of the Army Gen-
11 eral Staff called on the Throne on the 22nd, I have
12 not made any visit to the Throne." (T. 19,851-19,852)

13 Note: (2) Now, Ex. No. 179, KIDO's Diary,
14 shows the following entries:

15 Sept. 21st: "HARADA transmitted to KIDO,
16 SAIONJI's words to be cautious about KANAYA's answer
17 when KANAYA, Chief of General Staff, would go to see
18 the Emperor to explain why the Korean Army had advanced
19 into Manchuria without the Emperor's sanction" (T.1937).

20 Sept. 22nd: "The Army was so strongly deter-
21 mined in its positive policy toward Manchuria that
22 orders given by the Central Authorities could not be
23 carried out. The Emperor expressed satisfaction and
24 approval to the Prime Minister and the War Minister
25 for the Government policy to strive not to extend further

1 the Manchurian Incident. However, the Army was re-
2 ported to have construed and to be indignant that the
3 Emperor's opinion had been so induced to form by his
4 personal attendants." (T. 1,938)

5 Sept. 29th: "HARADA said that the Chief of
6 the General Staff told the Premier that chances were
7 the Army was compelled to send troops to the Yangtze
8 River area and that if this happened, the Government
9 should not interfere with the prerogative of the Supreme
10 Command of the Army." (T. 1,939-1,940)

11 Note: (3) It is quite plain, therefore,
12 that it was KANAYA who went to the Emperor to explain
13 the Korean Army's advance to Manchuria and who later
14 told WAKATSUKI not to interfere with the prerogative
15 of the Supreme Command. On the other hand, MINAMI
16 received the Emperor's approval for striving not to
17 extend further the Manchurian Incident. There is no
18 doubt also about whom KIDO meant by the words "the
19 Army" in his entries.

20 Note: (4) Ex. No. 3423, KANAYA's letter
21 of September 22d, encloses the Imperial Sanction of
22 the same date, which was subscribed as "By Imperial
23 Command, Chief of General Staff, KANAYA, Henzo."
24 (T. 32,835) Thus, the prosecutor's questions based
25 upon HARADA's Memoirs of September 22d-23d, 1931,

(Ex. No. 3758-A) are apparently contradicted by facts.

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4. According to MINAMI's testimony, since there was no means of conveying the policy of the Government to the Chief of the General Staff except through the War Minister, a very intimate relationship existed between the two. There was, however, a clear distinction between such a relationship and the deployment of forces for operational purposes overseas, and in so far as it was not inconsistent with the Government policy, no interference was exercised with the said Chief's actions. (T. 19,853) Then, to the President's question whether it was consistent with the Government policy not to recall the troops, MINAMI answered "Yes." (T. 19,853) This fact is endorsed by exhibit No. 189, Government proclamation of September 24th, 1931, which reads as follows:

"It may be added that while a mixed brigade of 4,000 men was sent from Korea to join the Manchurian garrison the total number of men in the garrison at the present still remains within the limit set by the treaty and that fact cannot therefore be regarded as having in any way added to the seriousness of the international situation. It may be superfluous to repeat that the Japanese Government harbors no territorial designs in Manchuria. What we desire is that

1 Japanese subjects shall be enabled to safely engage
2 in various peaceful pursuits and be given an opportu-
3 nity for participating in the development of their land
4 by means of capital and labor. It is the proper duty
5 of a government to protect the rights and interests
6 legitimately enjoyed by the nation or individuals. The
7 endeavors of the Japanese Government to guard the South
8 Manchurian Railway against wanton attacks would be
9 viewed in no other light." (T. 2,244)

10 5. At this juncture, we wish to call the
11 attention of the Tribunal to an obvious but seemingly
12 ignored fact that, although HAYASHI infringed the rule
13 to obtain the Imperial Sanction before the crossing
14 of the Manchu-Korean border, he, himself, had a good
15 cause to do so. According to KAWABE, then a staff
16 officer of the General Staff, "the Central Command
17 set a basic plan to the Kwantung and Korean armies,
18 and ordered the two armies to make detailed plans ac-
19 cording to it. There was included the consideration
20 of reinforcing the former army by the latter." "Ex.
21 2408, T. 19,408) ISHIHARA, then a staff officer of
22 the Kwantung Army, testified that the operational plans
23 drawn up by the central military authorities were
24 given separately to the Commander of the Kwantung Army
25 and to the Commander of the Korean Army. In these

1 plans, it was arranged that in case fighting broke out
2 in Manchuria, the Commander of Kwantung Army was to
3 ask for one mixed brigade from Korean Army to be sent
4 as speedily as possible; "and every year detailed agree-
5 ments between the two armies were drawn up in connec-
6 tion with the transportation of this mixed brigade."
7 (T. 22,237) Hence, it was natural for HONJO to cable
8 for a reinforcement from Korea and for HAYASHI to com-
9 ply with the request. The concentration of a mixed
10 brigade at the border in the morning of September 19th
11 was a mere routine work of this "prearranged plan,"
12 not many weeks or months old, but dating from the time
13 of the Russo-Japanese War. This can neither be called
14 a plot or conspiracy, nor be a preparation for waging
15 an illegal war, inasmuch as it was an axiomatic exer-
16 cise of the right of national defense inherent in any
17 sovereign state.

18
19 The fact that some members of the General
20 Staff wished to put this traditional plan into execu-
21 tion is apparent in the testimonies of MINAMI (Ex. 2435,
22 T. 19,781; see Section 2, Para. 1 above) and KAWABE,
23 (Ex. 2408, T. 19,412-13) and endorsed by the KIDO
24 Diary (Ex. 179, T. 1,937-40; see Section 3, Para. 3,
25 Note (2) above)

Note: KAWABE testified: "At the time Section

1 Chief IMANURA came out of the conference room, I think
2 about 9 o'clock, I read the telegraphic report ad-
3 dressed to the Chief of the General Staff from General
4 HAYASHI, Senjiro, Commander of the Korean Army, and
5 learned that a step had been taken to dispatch to
6 Manchuria a unit led by a brigade commander chiefly
7 consisting of five infantry battalions in order to
8 relieve the Kwentung Army near Mukden. I personally
9 know that the Kwentung unit near Mukden was a small
10 force and felt that the step taken by the Commander of
11 the Korean Army should be approved, and expressed my
12 opinion regarding this to my senior officer, but by
13 the leaders of the General Staff, reinforcement of
14 troops in Manchuria was looked upon as a measure that
15 might widen the incident and it was decided to order the
16 commander of the Korean Army to stop such action. They
17 immediately took measures to send a telegram to that
18 effect. Moreover, taking into account the time that
19 would be required for the commander's new order to be
20 transmitted to the troops under his command, acting
21 on the intention of the Central Command, the Vice Chief
22 of the General Staff issued the following order by
23 telegram to the Commander of the Military Police Unit
24 at Hsinichow on the south bank of the Yalu River:
25

"If any Korean Army Units should attempt to cross the

Yalu River, not knowing the orders prohibiting the expedition, the intention of the Central Command shall be conveyed in order to prevent any advance to the north of Hsinichow." (Ex. 2408, T. 19,412-13) If the Vice Chief had not taken this precautionary measure, the crossing of the border might have been carried out on the 19th, instead of the 21st.

From the above it may be inferred that HAYASHI must have thought that he was doing his duty in sending a reinforcement to Manchuria and that the stop order of the Chief of General Staff was a thing extraordinary. (Ex. 3422-A, see Section 3, Para. 1 above) As the wireless service of the Korean Army was out of order and the State Cable Service conveyed nothing but the said interdict, he felt himself "altogether isolated from the central authorities." (KOLAMA, Ex. 3431, T. 32,875) During the days of waiting at the border, he must have received all sorts of rumors and reports coming across the Yalu River and finally, on September 21st, the second appeal for aid from the Kwantung Army, telling him that not a single soldier remained in Mukden to guard the city. (KOLAMA, T. 32,876) He could not understand why the central authorities were neglecting the protection of compatriots in spite of virulent disturbances of law and order in Manchuria.

In the final analysis, he must have concluded that
1 the Imperial Sanction was a matter of formality while
2 the need on the spot was a matter of life and death.
3 He resolved upon himself meeting any punishment by
4 the Emperor rather than remaining indifferent at the
5 crisis of one million Japanese and Koreans. Thus,
6 he let his troops go into Manchuria, and expressing
7 his penance, sent in a formal enquiry to Tokyo whether
8 or not he should resign. (KODAMA, T. 32,877)
9

10 6. On the other hand, the fact that in
11 spite of the existence of the aforesaid traditional
12 plan of reinforcement, MINAMI requested KANAYA to send
13 a stop order to HAYASHI and KANAYA did as he was re-
14 quested (KOISO, Ex. 3375, T. 32,217-18; see Section 3,
15 Para. 1 above) is a significant proof that the central
16 army authorities never dreamt of such a thing as creat-
17 ing an incident in Manchuria or using it as "a pretext
18 for Japan to conquer, occupy and exploit that country."
19 (see Part I, Para. 4, above) They looked upon the
20 reinforcement of troops "as a measure that might widen
21 the incident." (KAWABE, Ex. 2408, T. 19,413, see
22 note in the preceding para.) Naturally, they could
23 not feel the tense atmosphere prevailing at the front-
24 er. However, when the troops had actually gone across
25 it, they were prevented from recalling them until a

1 fair prospect could be established for the maintenance
2 of law and order, for the simple reason that their
3 withdrawal would be advertised by the Chinese as a
4 Japanese defeat and bring about further disturbances
5 by bandits and fugitive soldiers.

6 Note: "The districts evacuated by the Japan-
7 ese were re-occupied by the Chinese troops and this
8 fact was widely advertised. Chinese morale was slightly
9 raised; and the activities of irregular forces and ban-
10 dits increased." (Ex. 57, T. 77)

11 Furthermore, the central army authorities
12 never intended to station the expeditionary force per-
13 manently in Manchuria. The Governmental proclamation
14 of September 24th, 1931, (Ex. 189) which was based on
15 the report submitted by MINAMI, (SHIDEHARA, Ex. 3479-A,
16 T. 33,551) announced to the world: "In order to fore-
17 stall imminent disaster the Japanese army had to act
18 swiftly. The Chinese soldiers, garrisoned in neighbor-
19 ing localities, were disarmed and the duty of main-
20 taining peace and order was left in the hands of the
21 local Chinese organization under the supervision of
22 the Japanese troops. These measures having been taken,
23 our soldiers were mostly withdrawn within the railway
24 zone. There still remain some detachments in Mukden
25 and Kirin and small number of men in a few other places.

1 But nowhere does a state of military occupation as
2 such exist. - - It is true that a detachment was
3 despatched to Kirin September 21st, but it was not
4 with a view to military occupation but only for the
5 purpose of removing the menace to the South Manchurian
6 Railway flank. As soon as that object has been attained
7 the bulk of our detachment will be withdrawn." (T.2243-4)

8 It is our submission that a public statement
9 of this magnitude in scope and minuteness in detail
10 could not have been made by a man who was not sin-
11 cere. We shall see in the following section how
12 MINAMI exerted himself in carrying out this assurance.
13 (In particular, see Section 4, Para. 4, below)

14 7. In reply to the prosecutor's question,
15 whether or not it was always possible for him to control
16 the operations of the General Staff by refusing to pay
17 the expenses, MINAMI testified that it could be done,
18 but that it had never been in his mind about reject-
19 ing expenditures and that nobody made any suggestion
20 in the cabinet such as he should deal with the matter
21 by refusing the payment of expenses. (T. 19,855-6)
22 He did not persuade the cabinet to authorize the
23 expense for the dispatch of troops. (T. 19,856) As
24 the Emperor approved the sending of troops from Korea
25 to Manchuria, the Government could not but approve the

1 defraying of expenditures (T. 20,057). The request
2 for such expenditures was made by the Chief of the
3 General Staff. The War Minister ascertained the
4 amount required for any particular purpose and then
5 brought the matter up to the cabinet, asking for the
6 approval of the Prime Minister. The amount thus ap-
7 proved was 9,600,000 Yen and drawn from the Second
8 Reserve Fund. (T. 20,057-20,578)

9 According to WAKATSUKI's testimony, he denies
10 that on September 22d the cabinet unanimously decided
11 the Korean Army's despatch to Manchuria and the de-
12 frayal of expenditures necessary there to. (T. 1,563-4)
13 He remembers, however, that he "did inform the Emperor
14 that the Cabinet had decided to pay the expenses of
15 the Japanese Army in Manchuria, but that was much
16 later." (T. 1,564-5) The Army was already in Manchuria,
17 and unless the expenses for the Army were disbursed
18 that Army would be endangered.

19 Note: In view of this fact, WAKATSUKI "as the
20 Prime Minister" decided to make such disbursements.

21 The War Minister might have said that to him,
22 but he does not remember at all. (T. 1,592) The fig-
23 ures on the amount of money necessary for those ex-
24 penses were compiled into the budget which was proposed
25 to the next session of the Diet and there approved.

1 WAKATSUKI thinks that such figures were furnished
2 by the Ministry of War, "since that would be the
3 proper procedure." (T. 1,593) In any case, this tes-
4 timony will refute HAKADA's Memoirs of September 22d-
5 23d, 1931. (Ex. 3758-A)

6 According to SHIDEHARA, he does not believe
7 that the question of providing the funds was taken up
8 at the Cabinet Council. (T. 33,636) "After the rein-
9 forcements had been sent from Korea, the War Ministry
10 thought that the expenditures would be defrayed within
11 the limits of the budget, and they . . . didn't apply
12 for any additional expenditure." There was no need
13 for MINAMI "to go to the Cabinet to ask for additional
14 expenditures so far as these expenditures could be
15 covered within the limits of the budget." (T. 33,638)

16 Whichever may be the case, whether or not
17 MINAMI had power to stop the supply of money and mater-
18 ial, whether or not he proposed the payment of ex-
19 penses to the Cabinet, or whether it was the Cabinet
20 or the Prime Minister who decided the matter, the most
21 important fact of the case is that neither MINAMI nor
22 WAKATSUKI nor SHIDEHARA ever thought of refusing the
23 defrayal of expenditures. Why? Because the troops were
24 already in Manchuria (WAKATSUKI, T. 1,564, 1,592;
25 SHIDEHARA, T. 33,640) and the Imperial Sanction was

1 given (MINAMI, T. 20,057), and they had to be sus-
2 tained until withdrawn. There was not the slightest
3 consciousness in MINAMI or anybody else concerned that
4 they were doing anything wrong by meeting the expenses
5 for supplying of such troops.

6 Section 4. Consular Reports and Government
7 Measures.

8 1. SHIDEHARA testified that after the incident
9 broke out, he received a number of reports from dip-
10 lomatic and consular officers in China and Manchuria
11 and used to send copies thereof to the Prime Minister,
12 the War Minister, the Navy Minister and the Chief of
13 General Staff, (T. 33,592-7) and that in the case of
14 the more important ones, he brought them up and dis-
15 cussed them in the cabinet. (T. 33,595) MINAMI does
16 not deny that he was kept informed of these consular
17 reports. It is obvious, however, that the War Minister,
18 who must have been very busy in these days, would not
19 himself look over the telegrams one by one. (T. 19,821,
20 19,827, 19,828; see Section 1, Para. 5, Note (3))

21 Note: (1) According to his testimony, he
22 never saw anything concrete, that is, the telegram
23 itself or the contents thereof. He trusted SHIDEHARA
24 implicitly and never asked him about telegrams each
25 time they arrived. (T. 19,879-80)

Note: (2) According to SHIRATORI's testimony, although reports from consuls in Manchuria and China were as a custom sent to the War Ministry, addressed to the Vice Minister of War, by the Telegraphic Section of the Foreign Office on orders of the Vice Minister of Foreign Affairs, the number of such reports sent out was about a half of the total number received. The Vice Minister of Foreign Affairs had the authority to select reports which would be transmitted to other ministries. Although it was possible for the Foreign Minister to give information to another minister at cabinet meetings, he did not directly concern himself with the transmission of such reports.

14 (T. 35,062-4)

15 From the above testimonies it may be inferred
16 that any information true or false, thus supplied by
17 the consular service and brought, if ever, to the notice
18 of MINAMI, must have been the common property
19 of the government as well as the Supreme Command. It
20 follows, therefore, that whatever measures, taken or
21 not taken by MINAMI in reference to such information,
22 were based on the wish and policy of the government as
23 a whole. WAKATSUKI testified: "As War Minister
24 MINAMI always came to cabinet meetings and never raised
25 any objection to policies decided by the cabinet, I do

1 not believe that War Minister MINAMI did anything in
2 opposition to the policy of the cabinet." (T. 1,583,
3 1,571; See PART I, Para. 10 above.)

4 SHIDEHARA testified also that he was sure
5 MINAMI had every desire to put into practice what
6 was discussed and determined at the cabinet. (T. 33,631-
7 33,632) Hence, MINAMI's action or inaction vis-a-vis
8 the said consular reports was no different than that
9 of the government. Bearing this premise in mind, we
10 shall in the following examine these consular reports
11 in chronological order in conjunction with the govern-
12 mental measures taken contemporaneously.

13 2. As to three telegrams of Consul-General
14 HAYASHI under date of September 19th, 1931, we have
15 already discussed them in detail. (See Section 2,
16 Paragraphs 4 and 5, above.)

17 On September 21st there were two telegrams
18 from HAYASHI to SHIDEHARA referring to the "temporary
19 city administration" of the Japanese and Chinese joint-
20 ly under Colonel DOHARA as Mayor and six Japanese as
21 section chiefs. (Ex. 3479-B, T. 33,602-3) However,
22 when HAYASHI met HONJO and pointed out to him the mis-
23 take, HONJO endorsed HAYASHI's opinion, but remarked
24 that it would be a matter of a few days, as it was
25 only a temporary measure until they could turn the

administration over to the Chinese. (Ex. 2194,
1 T. 15,736-8)

2 Immediately on the next day, the 22d, MINAMI
3 wired to HONJO that it was not proper to carry out
4 direct "military administration", that no time should
5 be lost in letting Chinese autonomous agencies, such
6 as the General Chamber of Commerce, take charge there-
7 of, and that the task of the army should be confined
8 only to negotiation and liaison with such agencies.
9 (Ex. 3422-C, T. 32,837) MINAMI testified that such
10 was the decision of the cabinet, (T. 19,878) but that
11 DOHIMAMA's prior appointment as Mayor was considered
12 unavoidable in order to restore and maintain law and
13 order in Mukden (T. 19,879) and that the Kwantung
14 Army did not violate the policy prohibiting military
15 administration. (T. 20,067)

17 Note: Refer to the testimonies of KATAKUMA
18 (T. 18,924-7) and ITAGAKI (Ex. 3316, T. 30,267). The
19 Kwantung Army had no intention of instituting a mili-
20 tary administration.

21 3. On September 22d, KANAYA wired to HONJO
22 that the Kwantung Army must maintain the present forma-
23 tion in line with its original duties. (Ex. 3422-D,
24 T. 32,839)

25 Note: (1) According to KAWABE's testimony

1 the Central Command ordered that the force dispatched
2 to Kirin should be evacuated to the South Manchurian
3 Railway zone as soon as the situation subsided, and
4 sent on the 22d the following telegram to HONJO: "We
5 now deem military action in Manchuria to have for the
6 most part fulfilled its purpose and to have now reached
7 a conclusion. Any further action will have a close
8 relationship with our domestic and foreign policies,
9 so be careful in considering matters and do not start
10 new actions until instructions from the Central Command
11 are received and then execute them." (Ex. 2408,
12 T. 19,415-6; See KATAKURA, T. 18,910)

13 Note: (2) According to KOISO's testimony,
14 towards the end of September MINAMI, after consultation
15 with KANAYA, indicated to HONJO that Japanese troops
16 should not advance either to the north or to the west
17 of the Taliaho (Liao River) line, and that units close
18 to Chinchow should be withdrawn. (T. 32,218)

19 On September 23d KANAYA wired to HONJO pro-
20 hibiting the despatch of troops to Harbin even in the
21 event of a sudden change in the situation. (Ex. 3422-F,
22 T. 32,840) On the same day, SUGIYAMA (Vice Minister
23 of War) wired to MIYAKE (Chief of Staff, Kwantung Army)
24 that the cabinet meeting decided to give no pro-
25 tection on the spot to Japanese residents in Harbin

and that they should be evacuated therefrom in case
1 the situation made it inevitable. (Ex. 3422-G, T.32,840)

2 Note: (3) According to KATAKURA's testimony,
3 retreating Chinese armies had engaged in riotous ac-
4 tivities in Harbin and thrown hand grenades at Japan-
5 ese establishments, whereby the Consulate General re-
6 quested three times for the despatch of troops. But
7 in accordance with the instructions from the central
8 authorities, HONJO abandoned the idea of defending the
9 residents in that area. (T. 18,912-14)

10 On the next day, the 24th, MINAMI wired to
11 HONJO instructing him not to use military force in
12 Chientao, even if the condition became serious, but to
13 rely on the police power. (Ex. 3422-H, T. 32,841)

14 Note: (4) According to MINAMI's testimony,
15 at page 16,860 of the record, he says that he did not,
16 on or about September 30th, propose in the cabinet
17 that troops should be sent to Chientao, and then at
18 page 19,865 he says "yes" and that it was a separate
19 and additional one besides the expedition of the Korean
20 Army on September 21st. (T. 19,868) He did not issue
21 the order but approved it, (T. 19,869) and the number
22 of troops dispatched was about 120 to 130 men.

23 T. 20,060) According to KODAMA's testimony, (Ex. 3431)
24 apart from the said telegraphic instruction of MINAMI
25

1 (Ex. 3422H), the Chief of the General Staff ordered
2 under Imperial Sanction the dispatch of the unit to
3 Chientsoo, as towards the end of October the situation
4 became too difficult for the police alone to deal
5 with it (T. 32,878). As exhibit 3422H shows MINAMI's
6 resolution on September 24th not to use military force
7 in Chientsoo even in the case of extremity, it is
8 improbable that he stressed the despatch of troops
9 there at a Cabinet meeting on or about September 30th
10 as alleged by HARADA's Memoirs of that date (Ex. 3759A,
11 T. 37,589). It was obviously towards the end of
12 October when such a measure was taken by the Chief
13 of the General Staff after approval of the Cabinet.
14 There is a confusion in MINAMI's testimony, but age
15 may account for it.
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1 4. On the same day, the 24th, MINAMI and
2 SUGIYAMA instructed Major General HASHIMOTO to go to
3 Manchuria and endeavor to make the Kwantung Army apply
4 for instruction of the central authorities in matters
5 seriously affecting the Government policy, without
6 letting the Army act on its own discretion (Ex. 3425,
7 T. 32,842-32843).

8 Note: According to MORISHIMA's testimony,
9 shortly after the Incident, three officers, namely
10 Major-General HASHIMOTO, Major ENDO and Captain IMAI
11 were sent by the central army authorities to Mukden
12 and their purpose was to communicate to the Kwantung
13 Army the intentions of the authorities, i.e., non-
14 expansion and settlement on the spot (T. 3,091).

15 On the next day, the 25th MINAMI wired to
16 HONJO as follows: "By virtue of the Governmental
17 declaration recently proclaimed, the course of the
18 Empire's policy has become clear of itself. At the
19 Cabinet meeting on this 25th, all the members agreed
20 to make every possible effort, with unity and cooper-
21 ation, for the execution of the purport of the said
22 declaration. Now that the country is facing an
23 emergency, it is absolutely necessary that both the
24 diplomatic and military authorities on the spot should
25 renounce minor differences for the greater common aim

1 and do their duty by mutual cooperation for the inter-
2 est of the country. The Foreign Minister has instructed
3 the diplomatic organs on the spot to the same effect
4 as above. Such a necessity is felt even more at this
5 time when an end shall be put to military actions
6 and a turn for diplomatic negotiations be commenced"
7 (cx. 3422I, T. 32,844).

8 The Governmental Proclamation above referred
9 to can be nothing but that of September 24th, 1931
10 (Ex. 189; see Section 3, Paras. 4 and 6, above),
11 which is a public manifestation of MINAMI's attitude
12 towards the Incident, while this telegram (Ex. 3422 I)
13 is a confidential expression of MINAMI's thought to
14 HONJO. In our submission not only there is no dis-
15 crepancy between the two, but the latter reflects
16 vividly his sincerity and earnestness in his effort
17 for peace. If his desire to substitute diplomatic
18 negotiations for military operations were fulfilled,
19 Japan would never have been ostracized by the world.
20 This evidence will refute HARADA's hearsay that MINAMI
21 proposed at a cabinet meeting to withdraw from the
22 League of Nations (Ex. 3760-A, T. 37,589-37,590).

23
24 5. On September 25th, the same day on which
25 the above telegram was despatched, MINAMI wired to
HONJO, strictly prohibiting Japanese from having

1 connection with any movement for promoting a new
2 regime in Manchuria (Ex. 3422J, T. 32,850-32851).

3 Note: (1) According to MINAMI's testimony,
4 he and SHIDEHARA sent instructions to Manchuria, the
5 former to the military and the latter to the diplomatic
6 organs to the effect that all Japanese should not
7 interfere or participate in such internal affairs or
8 movements in Manchuria (T. 20,063).

9 Note: (2) According to YAMAGUCHI's testi-
10 mony, at the time when he was a member of the South
11 Manchuria Railway, the company had strict regulations
12 prohibiting its employees from participation in any
13 such activities, and they were to be severely punished
14 if they violated the rule. And the Kwantung Army had
15 issued a proclamation under a military order, pro-
16 hibiting strictly any political activities by the
17 Japanese (T. 18,838-18,839).

18 On September 28th, HAYASHI reported to
19 S IDEHARA that according to the talk of DOHIMARA
20 to MORISHIMA, the Local Preservation Committee should
21 be gradually made into the central organ of admin-
22 istration and the self-defense corps should be trans-
23 ferred to the said Committee and 1000 rifles were
24 delivered for the purpose of organizing a police
25 force (Ex. 3479C, T. 33,605-33,606). We cannot however

1 see anything wrong in this report (See Para 10 below.
2 Ex. 286).

3 On September 29th, the next day, SUGIYAMA
4 (Vice-Minister of War) wired to MIYAKE (Chief of Staff,
5 Kwantung Army), warning the Kwantung Army to have
6 nothing to do with the movement for restoration of
7 Emperor Hsuan Tung, as rumor circulated among Cabinet
8 members that HONJO was connected therewith (Ex. 3422K,
9 T. 32,859; see KATAKURA, p. 18,974).

10 Note: (3) According to KATAKURA's testi-
11 mony, around September 22nd or 23rd, and also on the
12 26th, Lo Chin-Yu (Adviser to Emperor Hsuan Tung)
13 visited ITAGAKI and said that as Hsi Hsia (Governor
14 of Kirin) was desirous of inviting the Emperor to
15 Kirin, Lo would go to Tsientsin to call him in person.
16 KATAKURA drafted a telegram to Tokyo incorporating
17 the gist of the above conversation. In reply, the
18 Vice-Minister of War sent telegraphic instruction that
19 the Kwantung Army should not take part in any way with
20 such movements as the monarchical restoration. That
21 was towards the end of September (T. 18,942-18,943,
22 T. 18,968; ITAGAKI, Ex. 3316, T. 30,274).

23 Note: (4) According to MINAMI's testimony
24 he did not, about September 26th, hear a report from
25 the Ministry of Overseas Affairs that DOHIHARA and

1 others were planning to reinstall Pu-Yi as Emperor of
2 Manchuria. As he never received such reports, there
3 was nothing to take measures against (T. 19,877-
4 19,878). This is contradicted by the above-mentioned
5 telegram of SUGIYAMA, but it is obviously natural for
6 MINAMI not to be able to remember all these details
7 which took place 16 years ago.

8 Note: (5) On October 1st, SUGIYAMA wired
9 to MIYAKE, prohibiting the rumored intention of the
10 Kwantung Army to enforce municipal administration
11 in Changchung (Ex. 3428, T. 32,860).

12 6. On October 3rd, HAYASHI reported to
13 SHIDEHARA a rumor that Yan Chin-Kai would be the
14 leader of the Liaoning Autonomous Government and that
15 Yuan denied the rumor which was seemingly originated
16 from a request of DOHIHARA to Ting Chien-Hsiu to open
17 financial and business offices (Ex. 3479D, T. 33,607-
18 33,609). On October 6th, HAYASHI reported that YOSHII,
19 Ken Chao-Hsi and others were planning the establish-
20 ment of a new political regime with the Four Peoples
21 Preservation Committee as its basis, and that the
22 military authorities, recognizing this maneuver would
23 be contrary to their fundamental policies, advised
24 YOSHII to resign (Ex. 3479F, T. 33,610-33,612).
25

How could MINAMI have inferred from the above

1 reports any sinister meaning, such as that DOHIHARA
2 was guiding the local Chinese Committee, or that he
3 had ordered the Committee against its wish to set up
4 a Board of Finance and a Board of Industry, or that
5 he had prohibited the setting up of another Chinese
6 Committee because the only one must be the one which
7 he controlled and the army supported? (MINAMI
8 T. 19,881-19,882).

9 MINAMI's thought at that time was no different
10 from that of Yuan Chin-Kai, who, according to the
11 Lytton Report (p.89), declared publicly on October
12 5th, 1931, as follows: "The Committee (for the
13 Maintenance of Peace and Order) had been brought into
14 being to preserve peace and order after the breakdown
15 of the former administration. It assisted, moreover,
16 in relieving refugees, in restoring the money market,
17 and it attended to some other matters, solely for the
18 sake of preventing unnecessary hardship. It had,
19 however, no intention of organizing a Provincial
20 Government or declaring independence." If HONJO
21 was forcing independence upon an unwilling populace,
22 how could Yuan make such a public statement? What
23 MINAMI and SHIDEHARA as well as the whole Japanese
24 Government wanted was the repletion of these organs
25 for the maintenance of public order in various parts of

1 Manchuria and that gradual settling-down of the inner
2 regions by means of such organs (Ex. 286, T. 4,355-
3 4,359, see Para. 17, below). It must be admitted
4 that there was and is no other way of stabilizing the
5 people's life in a disorganized country following
6 conflict therein.

7 7. On October 13th, HAYASHI reported that
8 the Mukden Municipal Office was planning the monopoliz-
9 ation of opium and the issue of lottery tickets for
10 the purpose of raising their funds and that the
11 Kwantung Army had no objection to the scheme which,
12 HAYASHI thought, would be "unfavorable from the view-
13 point of international relations and so forth."
14 HAYASHI, therefore, requested SHIDEHARA "to call upon
15 the top army to immediately check this movement"
16 (Ex. 3740, T. 37,340-37,341). The request of HAYASHI
17 must have been carried out, for there is no evidence
18 that the Municipal Office monopolized the sale of
19 opium or issued lottery tickets.

20 On the same day, HAYASHI reported a story
21 of KIKUTAKI (Chief of the South Manchurian Railway
22 local office) that Cheng Hsi-Peng of Tsouen was
23 supplied with 5,000 rifles by the Kwantung Army, but
24 asked for further assistance of 200,000 Yen as war
25 fund, and also a rumor that the South Manchurian

1 Railway would advance 3,000,000 Yen to the Kwantung
2 Army (Ex. 2406, T. 37,323). On October 17th, HAYASHI
3 reported a story of Hsih Chieh-Shik that Chan Hai-Peng
4 would have been supplied with 10,000 rifles, 200,000
5 Yuan in silver, field guns and planes by "a certain
6 quarter" as a condition for entering Heilungkiang
7 Province, declared the independence, and then proceed
8 with the Restoration of the Monarchy, but in reality
9 received only 3,000 rifles and 200,000 Yuan in silver
10 (Ex. 2407, T. 37,324-37,325). It is obvious that such
11 rumors were current at that time, but that none of
12 them had even a logical foundation. MINAMI knew the
13 financial status of the Kwantung Army, which would
14 have barely sufficed to maintain its own troops
15 (see Section 3, Para. 7, above). Count. UCHIDA,
16 president of the South Manchurian Railway, was a
17 famous diplomat, having occupied the post of the
18 Foreign Minister at the time of the Washington Confer-
19 ence, and would have never consented to advance a cent
20 to the Kwantung Army for any purpose such as a
21 "secret military fund" (Ex. 2406). He was the one by
22 whose help HAYASHI tried to call the attention of
23 HONJO and to stop the Army's operation along the
24 South Manchurian Railway zone on the night of September
25 18th (Ex. 181, part 2, T. 2,183; see Section 2,

1 Para. 5, above). At any rate, MINAMI could not
2 believe these rumors without making a proper investi-
3 gation.

4 Note: (1. TAKEDA testified: "As far as
5 I know I believe that no such thing occurred. I
6 assume that Consul General HAYASHI's telegram is
7 very emotional and had a tendency to make exagger-
8 ations." (T. 19,363).

9 Note: (2) According to KATAKURA's testi-
10 mony, Chang Hai-peng donated 200,000 Yuan to Pu-Yi.
11 This will show that Chang was not in need of money
12 at all (see Para. 13, Note (3), below).

13 Note: (3) Chang Hai-Peng was one of the
14 Leaders of "the Three Eastern Provinces Independence
15 Army" in 1929, who planned to raise the Yellow Dragon
16 flag of the Ching Dynasty and set up Prince Kung as
17 the head of an independent Manchuria (Ix. 2385, report
18 of January 11th, 1929, from the Chief of Public
19 Safety Bureau of the Kwantung Government to the
20 authorities in Tokyo, T. 19,152).

21
22 On October 16th, HAYASHI reported that
23 preparations were being made to have the Local Preser-
24 vation Committee appoint a Chinese Mayor and Chinese
25 section chiefs, and that the Japanese occupying such
posts would resign according to the plan of the Army

1 (Ex. 3479 F, T. 33,613-33,614). On October 19th,
2 HAYASHI further reported that Chao Hsin-Po accepted
3 the mayorship of Mukden upon the earnest advice of
4 DOHIHARA, and that all the Japanese would resign
5 from their posts (Ex. 3479 G, T. 33,616). Such whole-
6 sale resignation of the Japanese officials is the
7 evidence that MINAMI's instruction not to meddle with
8 administrative affairs was complied with by the Kwan-
9 tung Army. According to MINAMI's testimony, it was
10 impossible for him to be informed of details, such
11 as that the Japanese who assisted DOHIHARA as mayor
12 were in future to act as advisers to his Chinese
13 successor or why DOHIHARA remained mayor for a month
14 or how his successor became appointed. MINAMI
15 believed that HONJO loyally abided by MINAMI's in-
16 structions as to Government policy and that DOHIHARA
17 was not interfering with the internal political
18 affairs of Manchuria (T. 19,893-19,894).

19 Note: (4) According to KATAKURA's testi-
20 mony, the Kwantung Army had never at any time on its
21 own taken any part in the foundation or organization
22 of a Committee for the maintenance of peace and order.
23 The Liaoning Committee was formed by Yuan Chin-Kai and
24 other Chinese and they later came to the Kwantung
25 Army headquarters in connection with the appointment

1 of a Japanese adviser. However, the Kwantung Army
2 maintained contact and liaison with committees after
3 they were established in order to seek their cooper-
4 ation, because the Kwantung Army did not establish
5 military administration. The Kwantung Army was not
6 at all a nursemaid of these committees, for according
7 to the old Chinese custom and practice such a committee
8 after it was formed was a full-fledged adult (T. 19,072-
9 19,074).

10 8. However, according to SHIDEHARA's testi-
11 mony, the Kwantung Army was not observing the decisions
12 of the Cabinet and SHIDEHARA often told MINAMI of what
13 was then happening in Manchuria, but his impression
14 was that MINAMI had no power to control these men.
15 SHIDEHARA is sure that MINAMI had every desire to put
16 into practice what was discussed and determined at the
17 Cabinet Council, but that his advice or instructions
18 were not, in fact, obeyed in various parts of Manchuria
19 (T. 33,631-33,632).

20 Note: (1) According to SHIDEHARA, MINAMI
21 had a "legal power" to have prevented the further
22 expansion of the Incident. "Under the existing law,
23 he could send any order to his subordinates, but he
24 probably looked at the question from a broader point
25 of view: whether that would bring any deterioration

1 of the whole situation in Manchuria" (T. 33,662).

2 Note: (2) According to SHIDEHARA, it was his
3 understanding that the Cabinet had no direct voice in
4 Army affairs (T. 1,335). The Government could not
5 interfere directly with the Army, but it could convey
6 to the Army through the War Minister what the Govern-
7 ment thought of any action of the army and so to a
8 certain extent the Government was able to have a say
9 in controlling the army policy (T. 1,336-1,337).

10 Legally, there was no rule definitely stating who was
11 responsible for the actions of the army, but his
12 opinion was that the War Minister was responsible,
13 because he was "the only one that could be responsible"
14 (T. 1,388). Concerning who was the Commander of the
15 Kwantung Army, the Cabinet had no connection with such
16 matters, which belonged to the Imperial prerogative of
17 the Supreme Command, and it was not within SHIDEHARA's
18 sphere to know of such matters. (T. 1,390)

19 From the above, it may be seen that SHIDEHARA
20 has no clear idea as to the legal power of the War
21 Minister (see Section 2, Para. 2, Notes (1), (2),
22 (3), (4) and (5) above).

23 Note: (3) Concerning the authority to
24 command HONJO, WAKATSUNI testified that the War
25 Minister was in charge of the administration of the

1 army and the Chief of General Staff was in charge of
2 strategic and operational matters and that the War
3 Minister had no authority to command the Chief of
4 General Staff (T. 1,585-1,586).

5 In reply to the prosecutor's question that
6 if MINAMI was really sincere in wanting to stop the
7 Incident, he had complete power to do it in one of
8 two ways, either by refusing to find the money out of
9 his budget or by recalling those officers who were not
10 carrying out his instructions, and that he did neither,
11 SHIDEHARA testified that that was legally right, but
12 then there might be a "revolution" or "wholesale
13 indiscipline" and MINAMI "would be placed in a very
14 impossible position" and that "perhaps he thought
15 about it and did not press the question at the Cabinet
16 Council," looking at the question from the "practical
17 side" (T. 33,639-33,640). The Kwantung Army "had
18 already given assurance that there would be no ag-
19 gravation of war," and all that SHIDEHARA and MINAMI
20 did was to put the Governmental declaration of non-
21 expansion into effect "with less possible friction"
22 (T. 33,640).

24 Note: (4) In reply to the prosecutor's
25 question whether SHIDEHARA asked MINAMI why MINAMI
did not recall those subordinates who would not obey

1 army and the Chief of General Staff was in charge of
2 strategic and operational matters and that the War
3 Minister had no authority to command the Chief of
4 General Staff (T. 1,585-1,586).

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7 Incident, he had complete power to do it in one of
8 two ways, either by refusing to find the money out of
9 his budget or by recalling these officers who were not
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12 then there might be a "revolution" or "wholesale
13 indiscipline" and MINAMI "would be placed in a very
14 impossible position" and that "perhaps he thought
15 about it and did not press the question at the Cabinet
16 Council," looking at the question from the "practical
17 side" (T. 33,639-33,640). The Kwantung Army "had
18 already given assurance that there would be no ag-
19 gravation of war," and all that SHIDEHARA and MINAMI
20 did was to put the Governmental declaration of non-
21 expansion into effect "with less possible friction"
22 (T. 33,640).

23
24 Note: (4) In reply to the prosecutor's
25 question whether SHIDEHARA asked MINAMI why MINAMI
did not recall those subordinates who would not obey

1 his orders, SHIDEHARA testified that there were so
2 many subordinate officers in Manchuria and that MINAMI
3 "looked very much embarrassed" when such a suggestion
4 was made at a Cabinet council (T. 33,632-33,633).

5 9. The above testimony of SHIDEHARA, sug-
6 gesting as if MINAMI might have been afraid of a
7 revolution or wholesale indiscipline is not entirely
8 without foundation. According to KATAKURA's testimony,
9 on October 18th, a message came from Tokyo that the
10 Kwantung Army should not take action such as to become
11 independent of the Japanese Army at home. Similar
12 telegrams were received by various units in the field.
13 On investigation, however, there was nothing in the
14 Kwantung Army to substantiate such a suspicion. General
15 SHIRAKAWA came from Tokyo, fearing that something was
16 in the offing, but found out nothing (T. 18,950-18,852).

17 Note: (1) According to ISHIHARA's affidavit
18 (Ex. 3584), when the so-called October Incident took
19 place, it was suspected in Tokyo that the Kwantung
20 Army might declare independence and that troubles might
21 be caused in concert with the said Army. Telegrams
22 in violent tones were received, and General SHIRAKAWA
23 came to Manchuria to appease the Army. Put the forces
24 in the field which were quietly striving to do their
25 duties could not help sneering at the confusion in the

central authorities (T. 22,117).

1 Note: (2) According to TANAKA's testimony,
2 he heard from CHO that, just after the October Incident,
3 opinion among the central military authorities was
4 not in favor of the Manchurian independence. Hence,
5 CHO let loose some rumors that the Kwantung Army was
6 intending to carry out a separatist movement and
7 declare its independence from Japan, if Japan proper
8 would continue to oppose the Kwantung Army. As a
9 result of this propaganda carried on by CHO, the
10 central authorities suddenly changed and began to lean
11 in favor of the Kwantung Army. But CHO said laughingly
12 that it was a plan hatched by himself and that no one
13 in the Kwantung Army had any idea about it. (T. 2,017).

15 Note: (3) According to ITAGAKI's affidavit
16 (Ex. 3318), at the end of October, HONJO disclosed to
17 his staff his views on the situation, comprising the
18 following propositions: (a) to wipe out the anti-
19 Japanese sentiment, (b) to give up Japan's rights and
20 interests, renounce her extraterritoriality and return
21 Port Arthur and Dairen to Manchuria (T. 30,269),
22 (c) to reject the return of Chang Hsueh-Liang and his
23 party (T. 30,270), (d) to make a clear distinction
24 between Pu-Yi's assumption as head of the new state
25 and the restoration of his imperial regime (T. 30,270-

30,271), (e) to leave all administrative matters to
1 the new state, the Kwantung Army limiting its action
2 to the maintenance of law and order (T. 30,272), and
3 (f) to quote: "So far, the Japanese government gave
4 us those prohibitive instructions only, such as pro-
5 hibiting us from participating in political and admin-
6 istrative matters, or instructing us to avoid restor-
7 ation of imperial regime, and no definite indication
8 as to the future policy of the Kwantung Army has been
9 shown by them. We presume it is only natural under
10 the circumstances. - - - we must make close observation
11 upon the future relation between Manchuria and Japan
12 in order to be able to report the true aspect of the
13 situation to the central government - - -" (T. 30,272-
14 30,273; KATAKURA, T. 18,981-18,983).

16 According to KATAKURA's testimony, views of
17 the Kwantung Army were frequently submitted to Tokyo
18 and there was a difference of opinion resulting there-
19 from. Public rumors were afloat that officers of the
20 Kwantung Army, entertaining very strong views, desired
21 to put HONJO under confinement or that they were dis-
22 patching messages to Tokyo by themselves without the
23 approval of senior officers. NINOMIYA, Vice Chief of
24 General Staff, came to investigate the matter, but
25 the situation was explained by HONJO himself (T. 18,986-

18,987).

1 This testimony will show a very difficult
2 situation which faced MINAMI in October and November
3 and which was aggravated by Pu-Yi's appearance in
4 Manchuria as described in the following paragraph.

5 10. On October 27th, HAYASHI reported that
6 according to Hsich Chch-Shih's talk, attempts of some
7 staff officers of the Kwantung Army to draw out Emperor
8 Hsuan Tung to Manchuria failed on account of the oppos-
9 ing advice given by KASHII (Commander of the Japanese
10 Garrison in Tientsin) to the Emperor and of the strict
11 watch kept by the Japanese police at the Emperor's
12 residence and that DOHARA was sent secretly to
13 Tientsin to execute the plan (T. 33,617-33,619). On
14 October 28th, HAYASHI reported that a prefectural
15 Autonomy Guidance Committee would be established under
16 the Local Autonomy Guidance Office, comprising Japanese
17 members, and that MIYAKE called a meeting of garrison
18 commanders and provost marshals to support this policy
19 (Ex. 3479 I, T. 33,627-33,630).

20
21 On November 1st, KUNASHIMA (Consul-General
22 at Tientsin) reported to SHIDEHARA that according to
23 Yao Chen, 6 Chinese representatives of the people of
24 the Three Eastern Provinces (i.e., Manchuria) arrived
25 at Tientsin a few days before to have a secret conference

1 with the Chinese group in Tientsin, and agreed upon
2 the autonomy of Manchuria under the leadership of
3 Tuan Chi-Juei (a famous elder statesman in China)
4 and that the representatives were apparently intend-
5 ing to carry out their plans with the consent of
6 HONJO, (Ex. 387, T. 4,360-4,361).

7 On the same day, November 1st, SHIDIHARA
8 wired to KUWASHIMA to the following effect: (a) as
9 the Sino-Japanese negotiations were not progressing
10 smoothly, Japan would desire, for the time being,
11 the retention of the organs for maintenance of public
12 order in various parts of Manchuria and the gradual
13 settling-down of the inner regions by means of such
14 organs; (b) but to form an independent State would
15 cause a great dispute by the United States and other
16 signatory Powers of the Nine Power Pact, the Central
17 Military also assenting to this point; (c) in any case,
18 to bring the Emperor out at this time would develop
19 into the most unfavorable situation for Japan, and
20 his restoration to the throne was a plan completely
21 anachronistic; (d) Liu Huan-Yeh who came from Mukden
22 to investigate opinions in Tokyo had met with strong
23 opposition; and to quote: (e) "Actually the War Minister
24 MINAMI has the intention to oppose the scheme and
25 Lieutenant-General SAKANISHI, it seems, had explained

1 to Liu that his scheme is anachronistic and has
2 requested prudence of the Emperor" (Ex. 286,
3 T. 4,355-4,359; language corrections at T. 36,164-
4 33,165).

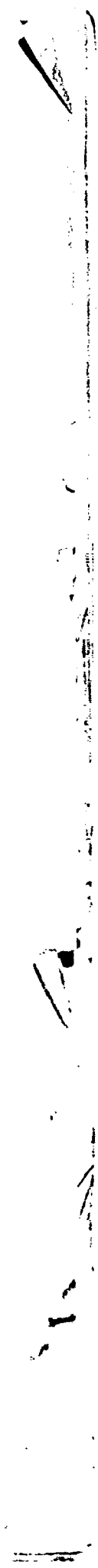
5 THE PRESIDENT: This seems to be a convenient
6 break. We are starting a new section. We will adjourn
7 until half past nine tomorrow morning.

8 (Whereupon, at 1600, an adjournment
9 was taken until Wednesday, 17 March 1948, at
10 0930)

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17 MARCH 1948

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1 Wednesday, 17 March 1948

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE E. STUART
14 McDOUGALL, Member from the Dominion of Canada and
15 HONORABLE JUSTICE I. M. ZARYANOV, Member from the
16 USSR., not sitting from 0930 to 1200; HONORABLE
17 JUSTICE B. V. A. ROLING, Member from the Kingdom of
18 the Netherlands, not sitting from 100 to 1200.

19 For the Prosecution Section, same as before.

20 For the Defense Section, same as before.

21 - - -

22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are
5 represented by counsel. The Sugamo prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 Captain Brooks.

10 MR. BROOKS: I resume reading, if your Honors
11 please, at the bottom of page 113, paragraph 11:

12 11. Thus, the prosecution exhibit 286
13 definitely established the fact that on or around
14 November 1, 1931, MINAMI was in complete agreement with
15 SHIDEHARA's views that to form an independent State would
16 cause a great dispute under the Nine Power Pact and that
17 to restore Pu Yi to his throne was an anachronism.
18 Actually, MINAMI himself was opposing such a scheme.

19 This fact is corroborated by exhibit 3433,
20 affidavit of Patrick J. Hurley, Secretary of War for
21 the United States in 1931 and who was in the Far East
22 at the time of the Manchurian Incident. Hurley deposed
23 that around the middle of October he met MINAMI in Tokyo
24 who told him (a) that Liu' t'iaukou Incident occurred
25 as a result of the destructive action by Chinese troops,

to which the Japanese took action in exercise of the
1 legitimate right of self-defense, (b) that the Govern-
2 ment was doing its best to localize the incident, (c)
3 that Japan had never at any time conceived of the idea
4 of annexing Manchuria or to make it a protectorate or
5 even to assist in its independence, and (d) that MINAMI
6 supported this policy of the WAKATSUKI Cabinet which
7 was to remain within the principles of the Nine Power
8 Pact, to limit the effect of the Mukden Incident and to
9 maintain friendly relations with the League of Nations
10 (pp. 32,885 - 32,889.)

12 In the light of these irrefutable evidence,
13 the total fallacy of the HARADA Memoirs is clearly ex-
14 posed. HARADA reports that at the Cabinet meeting of
15 October 1st, MINAMI opposed to SHIDEHARA's opinion and
16 proposed the withdrawal from the League of Nations (Ex.
17 3760-A, pp. 37,589 - 37,590) and also that at the
18 Cabinet meeting of October 22nd, MINAMI advocated the
19 secession from the League and the determination to wage
20 war against the whole world (Ex. 3761-A, p. 37,592.)
21 SHIDEHARA categorically denied these allegations (pp.
22 33,656-33,658, see Part I, par. 6 above) and Ex. 299, a
23 telegram of November 15, 1931, from MINAMI to HONJO will
24 prove MINAMI's deference to the League of Nations and
25 the Nine Power Treaty (see par. 13 below.)

12. Now, reports of November 2nd from MURAI
1 (Consul-General at Shanghai, Ex. 288, pp. 4,362-4,363)
2 and from KUWASHIMA (Ex. 289, pp. 4,363-4,369; Ex. 291,
3 pp. 4,373-4,374, language corrections at pp. 36,166-
4 36,167) of the 4th from KUWASHIMA (Ex. 292, pp. 4,375-
5 4,376) of the 12th from KUWASHIMA (Ex. 293, pp. 4,377,
6 language corrections at pp. 36,167-36,168) and from
7 HAYASHI (Ex. 2196, pp. 15740-D) of the 13th from
8 ARAKAWA (Consul-General at Yinkow, Ex. 294, pp. 4,379-
9 4,380) from KUWASHIMA (Ex. 295, pp. 4,381-4,383,
10 language corrections at pp. 36,168-36,170; and Ex. 296,
11 pp. 4,384-4,386) from HAYASHI (Ex. 297, pp. 4,387-4,388)
12 and from YAMAZAKI (Deputy Consul at Liaoyang, Ex. 298,
13 pp. 4,389-4,390) and of the 17th from KUWASHIMA (Ex.
14 300, pp. 4,394-4,398) deal mostly with DOHIHARA's com-
15 plicity in the escape of Pu Yi from Tientsin to Manchuria.

16
17 On the other hand, we have the evidence that on
18 November 11th, SUGIYAMA (Vice-Minister of War) wired to
19 MIYAKE (Chief of Staff, Kwantung Army) enquiring what
20 kind of duty DOHIHARA was assigned to do in Tientsin and
21 what arrangement was made with the China garrison as to
22 his scope of work, and cautioning the Kwantung Army not
23 to infringe upon the jurisdiction of the China garrison
24 and in future to inform the War Ministry of the duties
25 of any person to be sent to North China (Ex. 3429, pp.

32,861 - 32,862.)

1 Note: (1) Ex. 3429 says: "Happening to hear
2 that Colonel DOHIHARA is presumably carrying on
3 activities in Tientsin, we should like to know ---"
4 (p. 32,861.) According to KATAKURA's testimony, on
5 October 1st, there was a sudden communication from the
6 Tientsin garrison that Pu-Yi was willing to go to Man-
7 churia, if he had the support of 30 million people of
8 Manchuria and of the Japanese Army. About that time
9 Chin-Lioa, a central figure in the Liaoning Peace and
10 Order Maintenance Committee, was reported to have gone
11 with the aim of carrying on a movement to bring Pu-Yi
12 to Manchuria (Ex. 289 refers to Chin-Lioa as Chin-
13 Liang, p. 4,364, language corrections at p. 36,165.)
14 In the latter part of October, DOHIHARA was dispatched
15 to Tientsin at the personal will of HONJO without connec-
16 tion whatever with Tokyo, to collect intelligence of
17 that area, to study proper measures in the event of re-
18 treat of the Chang Regime to the South, to observe the
19 possible attitude of Chinese generals in such a case and
20 to sound out what kind of feeling Pu-Yi entertained on
21 his return to Manchuria. Around the first part of
22 November, DOHIHARA reported that Pu-Yi would like to go
23 to Manchuria as soon as possible, that Pu-Yi himself
24 wished to settle Ma Chan-Shan's problem, to obtain the
25

1 popular support by his presence and to establish his
2 government in Kirin, and that Consul-General KUWASHIMA
3 was opposed to the matter. MIYAKE, Chief of Staff,
4 instructed DOHIHARA to put it off, but immediately
5 thereafter, DOHIHARA reported again that Pu-Yi wanted to
6 cross the Liao River before it froze (pp. 18,968 -
7 18,972.)

8 In view of the above evidence it may be easily
9 inferred that DOHIHARA's activities in Tientsin were
10 kept strictly secret at least from the officials of the
11 War Ministry, as their opposition to the independence
12 movement and to the restoration of Pu-Yi was well known
13 to the Kwantung Army. When MINAMI became aware of the
14 matter, Pu-Yi had already landed at Yinkow.

15 Note: (2) On November 12th, HAYASHI was told
16 by HONJO that the latter not only had heard nothing
17 about Pu-Yi's coming to Manchuria, but even had ITAGAKI
18 notify the Tientsin Garrison several days ago not to
19 hurry about the matter. HONJO promised HAYASHI to
20 exert efforts so as not to start upon any immediate
21 movement. (Ex. 2196, pp. 15,740 - 15,741.) On the 13th
22 HAYASHI was informed by HONJO of Pu-Yi's arrival at
23 Yinkow (Ex. 297, pp. 4,387 - 4,388.)

24 Note: (3) According to MINAMI's testimony,
25 he was informed of the two riots in Tientsin, but not

~~of DOHIHARA's activities. Around that time, not one~~

1 single telegram was sent around to MINAMI from the
2 Foreign Office (p. 19,904.) He knew that DOHIHARA was
3 in Tientsin sometime in November. However, as DOHIHARA
4 would have been dispatched by order of the commanding
5 general and belonged to a different chain of command,
6 there would be no case of a report coming to the atten-
7 tion of the War Minister (pp. 19,906 - 19,907, see par.
8 15, Note (2) below.) He received the report that Pu-Yi
9 at his own desire arrived at Yinkow on or about November
10 11th (p. 19,909.) He did not make enquiries as to the
11 truth of rumors about DOHIHARA, but realizing that such
12 a thing should not be tolerated or be made to happen, he
13 sent in November additional instructions to HONJO over
14 and above those sent in September (p. 19,913.) He
15 instructed HONJO not merely that Pu-Yi's appearance in
16 Manchuria should be postponed because the time was pre-
17 mature, but that it should not be done at all (pp.
18 19,114 - 19,115.) This testimony must be read in con-
19 junction with exhibit 286 (see par. 11, preceding) and
20 exhibit 299 (see par. 13, succeeding.)
21

22 Note: (4) According to SHIDEHARA's testimony
23 he did not discuss with MINAMI whether or not it was
24 premature in October and November, 1931, to have an
25 independent Manchuria established under Pu-Yi. SHIDEHARA

1 also thought that it was not only premature but was al-
2 together wrong (pp. 33,647 - 33,648.)

3 13. The prosecution exhibit 299, a telegram
4 from MINAMI to HONJO under date of November 15, 1931,
5 shows MINAMI's reaction upon the news of Pu-Yi to the
6 following effect: (a) his unexpected appearance in
7 Manchuria would arouse suspicion of the world upon the
8 intention of the Army, inflicting injury upon the fair
9 attitude of Japan which MINAMI and others had hitherto
10 upheld, (b) to commit such hasty actions was by no means
11 a wise policy at the time when the atmosphere of the
12 League of Nations was showing signs of improvement, (c)
13 HONJO should have Pu-Yi in no way connected with
14 political problems, (d) if Japan took a wrong step, the
15 United States and other Powers would intervene on the
16 basis of the Nine Power Treaty, (e) MINAMI was deliber-
17 ating in conjunction with the Foreign Ministry what would
18 be the proper measure to take, and (f) although the
19 Foreign Ministry was considering the future leadership
20 of Pu-Yi through the wish of the Manchurian people, such
21 a decision should be made by maintaining a close connec-
22 tion with the central Government and in concert with the
23 world situation (pp. 4,391 - 4,393.)

24 In this telegram, we can clearly see his surprise
25 and vexation towards the rash act of the Kwantung Army,

his desire to improve the relationship with the League
1 and the signatory Powers of the Nine Power Treaty, and
2 his unceasing co-operation with the Foreign Ministry.

3 Note: (1) The above evidence will entirely
4 refute the prosecutor's suggestions based on the
5 HAFUDA Memoirs, such as, on or shortly before October
6 22nd, MINAMI said at a Cabinet meeting that there was
7 no need to pay any deference to the League of Nations
8 and that should Japan be determined to wage war against
9 the whole world, secession from the League could be
10 readily done (pp. 19,862 - 19,863) or on October 8th,
11 he evaded to answer WAKATSUKI's request, on the ground
12 of the Nine Power Treaty, to stop the Army's assistance
13 in setting up an independent government in Manchuria
14 (p. 19,883 - 19,884, see par. 11, above.) .

16 However, no matter how he felt with regard to
17 the appearance of Pu-Yi in Manchuria, MINAMI could not
18 make him go back to Tientsin, as the question of Pu-Yi's
19 visit either to Japan or to Port Arthur had been pending
20 since November, 1924, when he took refuge in the Japanese
21 Legation in China (Ex. 2384, Foreign Minister TANAKA's
22 instruction of June 17, 1929, to Consul General KATO at
23 Tientsin, p. 19,145) and had been decided in its favor,
24 if Pu-Yi would be satisfied with the same treatment as
25 that given to ordinary political refugees of China

1 (ditto, p. 19,150.) All MINAMI could do was, therefore,
2 to ask that Pu-Yi in no way became connected with
3 political affairs.

4 Note: (2) Pu-Yi's desire at that time to
5 establish Sino-Japanese friendship is manifested by his
6 letter of November 1, 1931, to MINAMI (Ex. 278-A, pp.
7 20,212 - 20,213.) This letter has been proved to be in
8 Pu-Yi's own handwriting (Ex. 2440 and 2440-A, affidavit
9 of TAKAMURA; Ex. 2441, affidavit of NANAMI.) On the
10 other hand, MINAMI testified that it was the policy of
11 the WAKATSUKI Cabinet not to connect itself with any
12 movement or plans either in Manchuria or in Tientsin
13 and that he did not place his trust in accepting any-
14 thing from a former Emperor with whom he had no previous
15 occasion to meet (pp. 19,898 - 19,899.)

16 Note: (3) According to KATAKURA's testimony,
17 because of strict instructions from Tokyo, the Kwantung
18 Army had decided to take Pu-Yi to Port Arthur for the
19 purpose of segregating him from various factions
20 interested in him. He was placed at the Yamato Hotel,
21 Port Arthur, under protection of the Administrative
22 Office of the Kwantung Leased Territory. Although inter-
23 views with the Japanese were prohibited, those with Man-
24 churia were free so long as no personal harm would be
25 caused upon him. Chang Hai-peng of Taonan made a

1 monetary presentation of 200,000 yuan to Pu-Yi and sent
2 an emissary to welcome him. Lao Tan-yan and Ling Sheng
3 of Kulubar called on him at Port Arthur (pp. 18,975 -
4 18,976.)

5 Note: (4) Ex. 301, report of November 22nd
6 from TSUKAMOTO, Governor of the Kwantung Leased Terri-
7 tory, stated that he had no objection to Pu-Yi's coming
8 to Port Arthur. Ex. 302, report of November 22nd from
9 ARAKAWA, Consul-General at Yinkow, stated that Pu-Yi was
10 moved by the Army to Port Arthur as he was bothered by
11 a large number of undesirable visitors (p. 4,400.)

12 Note: (5) Ex. 303, of November 26th from YANO,
13 Councillor at Peiping, and Ex. 304, of November 27th from
14 KUWASHIMA, reported the departure of the Empress from
15 Tientsin for Dairen (pp. 4,401 - 4,402.)

16 14. During and following the time the isolation
17 of Pu-Yi from political intrigues was being secured,
18 MINAMI had to attend to more pressing and more trouble-
19 some matters, that is to say, unstable conditions of
20 peace and order in Manchuria, on account of the rampancy
21 of bandits and the rivalry among local war lords, the
22 foremost being the Nonni Bridge question, which originated
23 from the destruction of railway bridges over the Nonni
24 River by Ma Chan-shan's troops in the middle of October
25 and necessitated drawn-out negotiations through both

consular and military services on the spot. (Ex. 57,
1 pp. 72-74; TAKEDA, Ex. 2405, pp. 19,338 - 19,351.)
2 On November 16th, KANAYA (Chief of General
3 Staff) gave permission to HONJO for an operation against
4 Ma Chan-shan, limiting it, however, to the minimum
5 really necessary for self-defense (Ex. 3422-L, pp.
6 32,862 - 32,863.) On November 24th, KANAYA ordered
7 HONJO to evacuate Tsitsihar, irrespective of any cir-
8 cumstances in line with the established policy (pp.
9 32,863 - 32,864.) On November 27th, KANAYA further
10 ordered HONJO not to take any operational action to the
11 west of the Liao River (Ex. 3422-N, p. 32,864) thereby
12 effecting the withdrawal of Japanese troops from the
13 vicinity of Chinchow to Hsinmin, "to the great surprise
14 of the Chinese" (Ex. 57, p. 77.) MINAMI and KOISO
15 testified that these evacuations in conformity with the
16 non-expansion policy of the Government were the result
17 of MINAMI's effort in prevailing upon KANAYA (Ex. 2435,
18 pp. 19,787 - 19,789; Ex. 3375, p. 32,219) the fact which
19 is corroborated by the prosecution exhibit 190, telegram
20 of November 24, 1931, from Forbes (U. S. Ambassador in
21 Japan) to Stimson (Secretary of State) as follows:
22 "The attitude of the Foreign Minister was wholly con-
23 ciliatory and cordial. He made the statement that the
24 Premier, the Minister of War, the Chief of Staff, and he
25

1 are agreed that towards Chinchow there shall be no
2 hostile operations, and orders have been issued to
3 that effect. . .The retention of troops at Tsitsihar,
4 he states, has no political significance. . .The neces-
5 sity for collecting and caring for the sufferers. . .
6 a matter of days. . .is the reason for the delay. . .
7 says he is also in complete agreement with the officers
8 of the War Department in the policy of this evacuation
9 . . ." (pp. 2,246 - 2,247.)

10 In this connection MINAMI testified: "About
11 this time, the annual army maneuvers were held in
12 Kyushu under the personal supervision of the Emperor.
13 Although the War Minister had to accompany His Majesty,
14 I remained in Tokyo with the Imperial permission as I
15 had to attend to the ever-changing situation both at
16 home and abroad, and exerted my best efforts to prevent
17 the expansion of conflict; in close collaboration with
18 the Government as well as the Supreme Command. I still
19 remember that when we succeeded in preventing the advance
20 of the Kwantung Army to Chinchow, the Prime Minister and
21 I, just the two of us together, drank a toast congratu-
22 lating ourselves on our success at the Premier's official
23 residence. Such being the case, I can state with the
24 utmost confidence that at least while I was War Minister,
25 there absolutely never was issued a false assurance or a

breach of international agreements committed, although
1 because of the rapidly changing situation in Manchuria,
2 the statements of the Japanese Government and the actual
3 conditions on the spot were inverted in point of time
4 and therefore were confused" (Ex. 2435, pp. 19,789 -
5 19,790.)

6 Note: (1) According to WAKATSUKI's testimony,
7 he was shown maps daily on which MINAMI would show by a
8 line a boundary which the Army would not go beyond, but
9 almost daily this boundary line was ignored and further
10 expansion was reported, always with assurances that this
11 was the final move. (Ex. 162, p. 1,556.) MINAMI affirms
12 the above statement (p. 19,831.) He spoke with sincer-
13 ity when he told the Cabinet that he was going to stop
14 HONJO. (p. 19,834.)

15 Note: (2) According to NAKAMURA's affidavit:
16 "Subsequently, a gap took place between the Cabinet
17 policy of non-enlargement and local settlement of the
18 incident and the movements of the army situated there
19 whose actions were governed by strategy, and as a result
20 of which the War Ministry, that is, the War Minister
21 found himself in a very difficult situation. This was
22 because strategic operations were under the control of
23 the Military Command of the Chief of the General Staff
24 and outside the authority of the War Minister." (Ex.
25

3413, pp. 32,806 - 32,807.)

1 15. Under the circumstances above-mentioned,
2 it is obvious that the main effort of MINAMI as War
3 Minister was directed towards the prevention of the
4 spreading of hostilities and the withdrawal of troops
5 as soon as and whenever possible. He was pressed hard
6 to do so not only by the Cabinet but by the League of
7 Nations and the United States, while attacked for being
8 too passive both by the army on the spot and by the
9 people at home. (MINAMI, Ex. 2435, p. 19,779.) His
10 position at that time was certainly not enviable.
11

12 Legally speaking, he had the power to supervise
13 the Kwantung Army in matters of personnel, discipline,
14 morale and expenditures, (MINAMI, p. 20,054) but
15 practically even such matters could not be disposed of
16 at his discretion in these days, without first obtaining
17 the approval of the Chief of General Staff, because it
18 was the time of an "incident" and the Kwantung Army,
19 having been placed in an operational disposition, was
20 under the exclusive control of the Chief of the General
21 Staff. It may be true that MINAMI could have recalled
22 HONJO, if he had wanted to, (p. 19,918) but then he must
23 have obtained KANAYA's consent before taking such a step.
24 If KANAYA did not agree, MINAMI could still have appealed
25 to the Emperor. Yes, theoretically that is so. However,

1 the only result thereof would have been the total dis-
2 ruption of the Government and the Supreme Command, and
3 neither MINAMI nor any Japanese under the old Constitu-
4 tion would have dreamed of committing such an audacity.

5 Note: (1) According to FUJITA's testimony,
6 since 1890, the interpretation of the Constitution was
7 that ministers of state had no responsibility with
8 respect to the Supreme Command and in March, 1925, the
9 Government made a declaration in the House of Peers that
10 Article 55 of the Constitution did not apply to the
11 Supreme Command. (pp. 17,553 - 17,554.)

12 Note: (2) Even theoretically speaking, the
13 War Minister could not have recalled staff officers of
14 the Kwantung Army, whether in peacetime or otherwise,
15 without the consent of the Chief of General Staff.
16 Article 1 of the Regulations for the Organization of the
17 War Ministry (Ex. 74) states that the War Minister
18 supervises the military administration of the Army,
19 ". . .while Article 3 of the Regulations of the General
20 Staff (Ex. 78) provides that the Chief of General Staff
21 supervises those military officers who occupy the posts
22 of staff. . .!(see Section 2, par. 2, Note (4) above.)
23 It is definitely a mistake to say that the Japanese War
24 Minister had "over-all authority." (p. 19,910.)
25

We do not wish to indulge in moot questions,

1 but we shall take one more instance. Supposing that
2 MINAMI and KANAYA had agreed and recalled HONJO and
3 others, would it have made any difference in the situ-
4 ation on the spot? Indeed, it might have, in the sense
5 that the Chinese side could widely advertise the dis-
6 grace of the general, increasing the activities of ir-
7 regular forces and bandits, thereby resulting in the
8 wholesale crash between China and Japan. The prosecutor,
9 when he suggested to MINAMI to control the actions of
10 the Kwantung Army by denying expenditures or by recall-
11 ing its responsible officers, forgot entirely the most
12 important fact that the Sino-Japanese tension, which had
13 been exploded by the Mukden Incident, could not have
14 been settled by such a step on the part of Japan alone.

15
16 16. Now, to return to MINAMI's way of think-
17 ing, he "did not recognize the need" of taking any
18 disciplinary measures, because he believed that HONJO
19 too was doing his best to abide with the Government
20 policy of non-expansion. As a matter of fact, during
21 MINAMI's tenure of office, the troops were always with-
22 drawn after an operation to original positions, even to
23 the detriment of the local peace and order.

24 Note: (1) "The districts evacuated by the
25 Japanese were reoccupied by the Chinese troops, and this
fact was widely advertised. Chinese morale was slightly

1 raised; and the activities of irregular forces and
2 bandits increased. Profiting by the winter season,
3 they crossed the frozen Liao River at many points and
4 raided the country around Mukden." (Ex. 57, p. 77.)

5 Although MINAMI was very much surprised and
6 vexed by HONJO's commitments to the new regime movement
7 and Pu-Yi's appearance in Manchuria, MINAMI honestly
8 believed that HONJO was acting for the good of and by
9 the wish of the Manchurian people.

10 HAYASHI's telegram of November 7th, reported
11 that as the result of pressure brought by the Army, the
12 Local Peace Preservation Committee decided to add to
13 the decree (for the establishment of the Liaoning
14 Provincial Government ad interim, see Ex. 57, p. 89)
15 the words purporting the severance from Chang Hsueh-
16 liang's regime and the National Government (Ex. 3479-J,
17 p. 33,623) but why should MINAMI accept such an
18 allegation without verification? There were numerous
19 unbelievable rumors, mostly originated from the Foreign
20 Office circles, for instance, that Commander HONJO was
21 in a state of restriction to quarters and nobody could
22 approach him. According to SHIDEHARA, it was "an open
23 secret." (p. 33,644.) However, if true then, how could
24 Consul-General HAYASHI have seen HONJO on so many
25 occasions and report their conversations so freely?

1 (Ex. 2194, pp. 15,736-15,738; Ex. 2196, pp. 15,740-
2 15,741; Ex. 297, pp. 4,387-4,388.)

3 Also, on the other hand, investigations con-
4 ducted by Colonel ANDO and Major-General HASHIMOTO
5 respectively in September, by General SHIRAKAWA in
6 October and by Lieutenant-General NINOMIYA in November,
7 all reported that the army on the spot was abiding by
8 the policy of the Government. (MINAMI, pp. 20,060-
9 20,062.) Which side should MINAMI have believed:
10 Rumors from consuls based on hearsay or official
11 reports cited, after investigations thereon?

12 A most important fact of MINAMI's defense is
13 that the time between the outbreak of the Mukden Inci-
14 dent on September 18th and the resignation of the
15 WAKATSUKI Cabinet and himself on December 10th amounted
16 only to 83 days, that is to say, less than 3 months.
17 During that period, he was overwhelmed by trying to co-
18 ordinate the Government policies of the Cabinet, with
19 the actions of the General Staff and to secure support
20 of public opinion at home and from the League of Nations
21 and the United States abroad. He had no time to give
22 much importance even to the ex-Emperor's letter. (p.
23 19,900.) How could he make enquiries into such details
24 as how the Self-Governing Guiding Board was established
25 and who was operating it? (p. 19,895.)

Note: (2) Ex. 3377, letter of December 5,
1 1931, from MIYAKE to SUGIYAMA states: (a) "the various
2 Chinese regimes at the present are dependent solely
3 upon the Japanese Military and are already in the midst
4 of various constructions to a considerable degree,"
5 (b) "it will be most logical for the Army to newly
6 establish a governing section in the present organ and
7 for the various organs in Manchuria to give it lateral
8 support," (c) "if a new government is established, its
9 guidance will be carried out by an advisory body," and
10 (d) "it will be advantageous for the Army Headquarters
11 and others to merge with the Government General described
12 in a separate book." (pp. 32,340 - 32,341.)

14 This letter was received by the War Ministry
15 on December 9th, one day prior to the resignation of
16 MINAMI. (p. 32,453.) KOISO testified that there was
17 nothing by way of seals affixed or otherwise as was
18 customary to indicate that the War Minister or the Vice-
19 Minister or the Chief of Military Affairs Bureau had seen
20 this document. (p. 32,454.) Furthermore, there is no
21 evidence that such a plan was approved or accepted by
22 anybody in the Government at Tokyo.

24 Note: (3) According to INUKAI's testimony,
25 around December, 1931, there still existed an opinion
within the General Staff and the War Ministry that

1 Manchurians should not establish an independent state.

2 In January, 1932, following personal shifts within the
3 army, this opinion ceased, and the great majority of the
4 army were convinced that Manchurians should be allowed
5 to establish a separate state. (p. 1,548, 1,526 -
6 1,527.)

7 17. According to exhibit 2205-A, Minutes of
8 the Privy Council of December 9th, 1931, MINAMI
9 reported to the Council (a) that an order was issued on
10 November 27th to withdraw troops to a position east of
11 Hsinmin, (b) that there was no necessity for any strong
12 offensive action, because if Japan so demanded, the
13 Chinese would evacuate Chinchow and (c) that perhaps
14 this might have led to the newspaper report of an
15 agreement between the Chief of General Staff, the War
16 Minister and the Foreign Minister not to attack Chin-
17 chow. (p. 15,765.) According to MINAMI's testimony,
18 he heard from SHIDEHARA that the Chinese would evacuate
19 Chinchow as a result of negotiations between Japan and
20 China. He was not telling the Council that the news-
21 paper reports that there would be no attack on Chinchow
22 were untrue. He was the author of the proposal that
23 Japan must not attack Chinchow and requested the Chief
24 of General Staff to withdraw troops near Chinchow.
25 (p. 19,836 - 19,837.) Evidence mentioned in paragraph 14

1 above will definitely show that there was no contradic-
2 tion between his statements and his actions throughout
3 the matter. (p. 19840.)

4 To Councillor EGI's question whether or not
5 Japan was losing general confidence as a result of
6 continually taking action under the pretext of self-
7 defense, MINAMI replied that he did not wish to give the
8 impression to foreign countries that Japan had attacked
9 Manchuria and Mongolia (pp. 15,765 - 15,766) because
10 such was not the fact. According to MINAMI's testimony,
11 he thinks that EGI's question was most natural because
12 he himself at no time wanted the expansion of military
13 actions. However, he does not agree with EGI that self-
14 defense was only a pretext. (pp. 19,838 - 19,839.) To
15 Councillor SAKURAI's remark that after the bombing of
16 Chinchow, Japan quickly lost the confidence of the
17 League of Nations, MINAMI replied that he too considered
18 it regrettable. (p. 15,766.) These statements of
19 MINAMI show nothing but his agreement with the world's
20 opinion.
21

22 On the next day, December 10th, he together
23 with the other members of the Cabinet, submitted his
24 resignation to the Throne.

25 18. According to MINAMI's testimony, at the
time when Chinchow was occupied by the Kwantung Army on

1 January 3, 1932, he was in Manchuria on an inspection
2 tour. He believed that this occupation was necessitated
3 by the state of the enemy, but utterly contrary to his
4 policy. However, he had no say in this matter. On his
5 return from the Manchurian tour, he made a report to
6 War Minister ARAKI and told him that the occupation of
7 Chinchow was contrary to the policy which HINAMI set up,
8 but all ARAKI could do was to listen. (p. 19,922 -
9 19,923.)

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1 In this connection, let us consider the
2 result of MINAMI's work during the hectic 83 days
3 from September 18th to December 10th, 1931. He did
4 his level best to localize the Mukden Incident, to
5 stop the crossing of border by the Korean Army, to
6 suspend the dispatch of troops to Harbin, Chientao
7 and Chinchow and to prohibit the Japanese participation
8 in any political movement in Manchuria. His primary
9 aim as the War Minister was to put the Governmental
10 proclamation of September 24th into effect (SHIDEHARA,
11 p. 33,640; see Para. 8 above). However, all his
12 expectations were shattered, all his efforts came to
13 naught, by the inevitable succession of explosions
14 of a long pent-up antagonism between China and Japan.
15 He fought against the force majeure and had to acknowledge
16 his defeat by resignation.

17 As soon as he was relieved from his office,
18 MINAMI made a hurried trip to Manchuria to verify the
19 actual state of things there, for he was sincerely
20 anxious about the rumors which had been afloat since
21 the beginning of the Incident. MINAMI testified: "When
22 I went, of course, I did not know how things would
23 develop in Manchuria, so I had no idea that Manchuria
24 would become an independent state. When I met HONJO,
25 I told him once again, as I had already done in orders

1 sent previously, that the army must not be involved
2 in the independent movements at all" (p. 19,933).

3 Then, he interviewed Hsi Hsia, Sun Chi-Chan,
4 Tsang Shih-I, Hsieh Chieh-Shih and many other leaders
5 in Kirin, Harbin and Taonen (MINAMI, pp. 19,933-19,934)
6 and found that Manchuria was far more advanced than
7 he had supposed when he was in Tokyo (p. 19,932).
8 He became convinced of the ardent desire and long
9 cherished aspirations of the Manchurians for
10 independence and of their capacity of realizing such
11 independence, irrespective of the presence or absence
12 of Japanese troops. As MINAMI knew that the amount
13 of money approved by the Cabinet for the use of the
14 Kwantung Army would barely suffice to maintain its
15 own soldiers, there could have been no buying-up
16 of so many pro-Japanese enthusiasts in such a short
17 time, in contrast to any political movement in China
18 proper. He talked with HONJO and officers of the
19 Kwantung Army, and believed in their words that the
20 action on the night of September 18th-19th was for
21 the sole purpose of self-defense and the subsequent
22 measures were nothing but for maintenance of law and
23 order in a disorganized country and taken on the
24 request of local inhabitants. Even Consul-General
25 HAYASHI told him no such thing as the fomentation of

1 independence movements by the Kwantung Army (p. 19,934-
2 19,935). During his tour of two weeks, many of his
3 apprehensions were thus dissolved.

4 After having seen by his own eyes the actual
5 state of affairs on the spot, he could not but revise
6 his opinion and take into consideration the possibility
7 of the Manchurian independence, which he had been
8 rejecting strenuously while at the post of War Minister.
9 He was finally led to believe that the protection
10 of Japan's rights in Manchuria would not be adequate
11 in future, except on the basis of presumption that
12 Manchuria might become independent (p. 19,938). On
13 this basis, indeed, he spoke at the Imperial tea party
14 of January 28th, 1932, about his impressions on the
15 latest situation in Manchuria (Ex. #2251, pp. 19,924-
16 19,925; MINAMI pp. 19,938-19,939).

17 Note: (1) According to Ex. #2251, KIDO's
18 Diary, MINAMI spoke on January 28th, 1932, about his
19 impressions on the latest situation in Manchuria
20 before the Emperor, giving his conclusions to the
21 following effect: (a) in the matter of national
22 defense, to take over the defense of the new state
23 and, by expediting the completion of the Kirin-Kainei
24 Railway, make the Sea of Japan into a lake and facilitate
25 Japan's advance into North Manchuria area, (b) in the

1 matter of Japan-Manchuria joint management, to take
2 concrete measures against economic blockade from
3 abroad, and (c) in the matter of solution of
4 population problem to give emigrants in Manchuria
5 the same protection as emigrants received in South
6 America and to establish a colonial trooping system
7 (pp. 19,924-19,925).

8 Note: (2) According to MINAMI's testimony,
9 he attended this discussion group at the Imperial
10 tea party, not as a Supreme War Councillor, but as a
11 private individual (p. 19,928). It was his hope that
12 the waters of the Japan Sea would always be as calm
13 as those of a lake (p. 19,935). By the completion
14 of the Kirin-Kainei Railway, the stability of Manchuria
15 would be ensured, thus contributing to the national
16 defense of Japan against a possible enemy (p. 19,937).
17 The basis of his idea was the stabilization of Manchuria
18 and not its occupation (p. 19,938). By a colonial
19 trooping system, he meant the Chinese system of each
20 hamlet maintaining its own soldiers against bandits.
21 He did not mean that the colonists were to be reservists
22 of the army. As a matter of fact, they were not
23 (p. 19,939).

24 Note: (3) It is apparent that his theory
25 of national defense above expounded is nothing but

1 an imitation of Chamberlain's interpretation of self-
2 defense in reference to the Kellogg-Briand Pact.

3 Chamberlain said: "Their (certain regions of the
4 world the welfare and integrity of which constitute a
5 special and vital interest for the British peace and
6 safety) protection against attack is to the British
7 Empire a measure of self-defense" (Ex. #2314-A, p.
8 17,366; see Part I, para. 3. above). It must be remembered
9 that this Pact of 1928 was concluded 6 years later
10 than the Nine-Power Treaty of 1922.

11 Section 5. Manchukuo Questions.

12 1. After MINAMI handed in his resignation
13 on December 10th, 1931 (p. 19,918), he was given
14 the obscure post of military councillor, which had
15 nothing to do except to assemble about twice a year
16 to hear lectures given by the military authorities
17 (Ex. #2435, p. 19,790).

18 Also, it was not proper for him, as a member
19 of the former Government, to touch upon political
20 matters when the Government and the policies had changed
21 (p. 19,923). He spoke to the Emperor at the Imperial
22 tea party of January 28th, 1932, "of his impressions
23 resulting from his inspection of the general situation
24 in Manchuria" (Ex. #2251, p. 19,924), but that was
25 the only occasion of his expression of views upon

current topics. For full three years thereafter,
1 he devoted his time as tutor to the young Prince
2 Kan-In and paid little attention to the political and
3 military affairs (p. 19,790).

4 During the three years between December
5 10th, 1931, and December 10th, 1934, when MINAMI was
6 appointed Ambassador to Manchukuo and concurrently
7 Commander of the Kwantung Army, not only had the Japan-
8 Manchukuo Protocol been concluded and Japan recognized
9 the independence of Manchukuo, but the Vatican, the
10 Republic of Salvador and the Republic of Dominica
11 also recognized Manchukuo, which was growing as a
12 newborn sovereign State with amazing rapidity (p. 19,791).

13 Note: (1) Ex. #241, Minutes of the Privy
14 Council meeting on September 13th, 1932, quotes Foreign
15 Minister UCHIDA's explanation as follows: "The action
16 of the Japanese Army to cope with the incident which
17 occurred on September 18th of last year was nothing
18 but the exercise of our right of self-defense. It is
19 true, however, that this action was availed of by the
20 thirty million people of Manchukuo for creating a new
21 State, but it is not in the least improper to recognize
22 that the creation of the new State was entirely based
23 on the free will of the people of Manchukuo. The
24 Nine-Power Pact provides that the Chinese territorial
25

1 integrity shall be respected, but it makes no provision
2 at all for a case where a part of China becomes
3 independent as the result of China's own disintegration.
4 In fact, when Ambassador DEBUCHI recently approached
5 the American Government authorities and informally
6 asked if they would protest in case Japan should
7 recognize Manchukuo, they replied that they had not
8 the slightest intention of making a protest or convoking
9 a Nine-Power conference, inasmuch as there was no
10 hope of such a conference reaching any conclusion.
11 Besides, the convocation of Nine-Power conference will
12 be opposed by some of the European countries. ---Whether
13 or not there is doubt that the contents of the
14 strictly secret treaty are incompatible with the
15 Nine-Power Pact, I am confident that there is no
16 conflict between the two ---I see no objection to
17 the fact that Japan has been entrusted by Manchukuo
18 with such matters as that country cannot do herself"
19 (pp. 2,985-2,986). As has been proverbially said since
20 the announcement of President Wilson's Fourteen Points,
21 self-determination of a people is a human right. There
22 was no reason why MINAMI or any citizen of Japan
23 at that time should doubt the words of the Foreign
24 Minister above-mentioned. It was indeed his honest
25 and reasonable belief that the independence of Manchukuo

1 was genuine and spontaneous (MINAMI, pp. 20,044-
2 20,045).

3 Note: (2) On February 9th, 1934, MINAMI
4 was appointed "Gijokan", a councillor of the Board
5 of Decorations. The Prosecution's allegation that
6 he was a "Cabinet Councillor" is mistaken (Refer to
7 Mr. Comyns-Carr's statement, p. 16,871; Ex. #117,
8 page 6, line 10); IPS Document #0001 (pp. 21 and 331);
9 Ex. #3437, MURATA's affidavit, pp. 32,927-32,928).

10 2. KUWASHIMA (then Director of the East
11 Asiatic Affairs Bureau of the Foreign Office) testified
12 that MINAMI, as ambassador to Manchukuo in 1935, was
13 under the supervision of the Foreign Minister and
14 never acted contrary to the instructions of the
15 Government (pp. 29,500-29,501). KAWABE, then staff
16 officer of the Kwantung Army testified that MINAMI's
17 instructions to his officers and men invariably
18 contained two ideas, namely, (a) respect for and assistance
19 to independent Manchukuo, and (b) self-reflection and
20 elimination of the vain feeling of Japanese superiority,
21 and that all the staff working under him believed
22 firmly in the fact that Manchukuo would secure her
23 international status as a perfect independent country)
24 Ex. #3434, pp. 32,894-32,895).

25 Note: (1) TAMAKA testified as follows: "I

1 think General MINAMI was appointed because of his
2 very amiable character and his administrative ability.
3 I am referring to the fact that there was a big job
4 to be done, since Manchuria at that time was a hot-bed
5 of many disputes, especially between the police and
6 the military police, and because banditry was still
7 widespread, and his job was to restore peace and order --
8 because it was right after the time when there was
9 an open clash between civil police and military
10 police and also because of guerrillas and bandits
11 the situation was in chaos" (p. 2, 140).

12 Note: (2) TANAKA testified further that
13 immediately after MINAMI's arrival in Manchuria, he
14 abolished the Special Service Department in order to
15 remove evils of the practice of meddling in politics,
16 inasmuch as MINAMI felt that it would lead to the
17 corruption of the army itself and that he took the
18 first decisive step towards the abolition of extra-
19 territoriality in Manchuria and the transfer of the
20 administrative rights of the S.M.R. zone (p. 2, 118).

22 Note: (3) TANAKA also testified that
23 until 1935, when the Opium Control Board was set up
24 by the Manchukuo Government, the opium trade was
25 controlled by the various special service organs of
the Kwantung Army and that MINAMI was one of the persons

1 who made efforts to take away the control of opium
2 traffic from such organs and to help establish the
3 Opium Control Board under the Manchukuo Government
4 (pp. 15,856-15,858).

5 Note: (4) OKADA testified that his cabinet,
6 which came into office in July, 1934, was known as
7 "Navy Cabinet", in opposition to the army policy of
8 the use of force in connection with the expansion of
9 Japanese influence in Asia (pp. 1,823-1,824). The
10 administrative policy of the OKADA Cabinet was the
11 control or supervision of the military, the economy
12 of expenditures and the relief to the farming
13 population (p. 1,886), but his Cabinet had no Manchurian
14 policy (p. 1,890).

15 Note: (5) According to MINAMI's testimony,
16 it was the policy of the OKADA Cabinet and also his
17 personal conviction that the independence of Manchukuo
18 should be completely respected and every encouragement
19 given for its healthy growth as a sovereign State.
20 Hence, the Kwantung Army made the maintenance of peace
21 and order as its primary function and for this reason
22 he frequently gave them stern instructions not to meddle
23 in politics or do anything injurious to the prestige
24 of Manchukuo. In pursuance of the policy of the
25 Japanese Government, he abolished the Special Service

1 Department of the Army and the government of the
2 Kwantung Leased Territory and tried his best to simplify
3 the Japanese organs in Manchukuo to every extent
4 possible (Ex. #2435, pp. 19,792-19,793).

5 3. As the third ambassador to the Court
6 of Manchu after Marshal MUTO and General HISHIKARI,
7 MINAMI was received by the Emperor of Manchukuo on
8 the 3rd, 13th and 23rd of each month as days for
9 regular audience (Ex. #2435, p. 19,792). He advised
10 on matters such as agriculture, transportation,
11 education, etc. It is a noteworthy fact that Pu-Yi
12 in his severe criticism of everything Japanese never
13 once complained of MINAMI or of anything done during
14 MINAMI's tenure of office in Manchukuo (see Pu-Yi's
15 testimony, August 16th-27th, 1946).

16 Note: (1) According to MINAMI's testimony,
17 Manchukuo and Japan were on equal footing and it is
18 a great mistake to say that he was in control of the
19 Manchurian Government (p. 19,954-19,955). The greatest
20 reason for the abolition of the Special Service
21 Department was that he wished to put the Manchukuo
22 Government in a position whereby it would be free to
23 conduct its internal affairs (p. 19,975). He was
24 not a member of the Concordia Society, nor even an
25 honorary adviser. He was bitterly opposed to it because

1 he believed that if such an organ was established
2 while the country was still very young and before its
3 local administration was firmly established, the
4 various functions of the Society might conflict with
5 Governmental policies (p. 19,969). Although he did
6 not issue any directives about the Kyowakai, it was
7 not active during his tenure of office in Manchukuo
8 (p. 19,970).

9 Note: (2) KATAKURA, Chief of the Manchurian
10 Section, Military Affairs Bureau, War Ministry, from
11 December, 1934, to March, 1937, testified that the
12 Kwantung Army had the Foreign Office investigate into
13 possible cases wherein a foreign country stationed
14 its troops in an independent nation and that special
15 considerations were given so as Manchukuo would be
16 respected, e.g., in case a Manchurian committed any
17 offence against the Kwantung Army, his trial and
18 punishment would be done by the Manchurian Government
19 instead of by Courts Martial; in case the Japanese
20 army required a certain material, such procurement
21 orders would be made in accordance with Manchukuo
22 laws. "In other words, it was that Japan would, by
23 submitting to the laws of the State of Manchukuo,
24 relinquish the exercise of any privileges --- which
25 an army would enjoy under the international law"

(pp. 19,044-19,045).

1 Note: (3) Ex. #240, letter from NISHIO,
2 Chief of Staff of the Kwantung Army, to FUKUSO,
3 Vice-Minister of War under date of October 25th, 1935,
4 says: "I herewith send the enclosed record of
5 resolutions of the KOHO Committee which we had reported
6 in the telegram No. Kan-Sen-Den 220; Plan for the
7 controlling organs directing public opinion in
8 Manchuria." (p. 2,967). Obviously, it was not a
9 plan of the Kwantung Army to control the public
10 opinion in Manchukuo, but merely a record of resolutions
11 of a committee of the Manchukuo Government itself.
12 According to MINAMI's testimony, at that time the
13 situation in the publishing world was extremely
14 complicated with newspapers and journals owned by
15 the Japanese and the Chinese, and the competition was
16 extremely intense. So he saw merit in such a plan
17 and gave NISHIO, his Chief of Staff, authority to
18 send it to Tokyo (pp. 19,967-19,968). The objects
19 of the plan were stated in the said document as
20 follows: (a) to unify the press agencies of both
21 the Japanese and Manchukuo Governments as well as those
22 of the S.M.R., (b) to rationalize the management of
23 public opinion in Manchuria, and (d) to facilitate
24 and ascertain the unitary control and execution
25

1 of propaganda (p. 2,968). Further, there is no evidence
2 showing that such a plan was in fact ever carried out.

3 4. It seems that the prosecution blames
4 MINAMI for giving the Government of Manchukuo advice,
5 alleged to be, in substance, "a direction" (Ex. #2207,
6 pp. 18,788-18,789, p. 16,868, pp. 19,958-19,959).
7 Prosecution witness TANAKA testified, however, (a)
8 that the Kwantung Army exercised such inner guidance
9 within Manchukuo by virtue of the Japan-Manchukuo
10 Treaty (Ex. #440), (b) that this authority was conferred
11 upon the Commander of the Kwantung Army by the Japanese
12 Government, (c) that Japan's policy towards Manchukuo
13 having been fixed before MINAMI went there, it could
14 not have been changed or modified by his single
15 authority, and (d) that there was a very great difference
16 between interference or pulling the strings and inner
17 guidance, as it were (pp. 2,114-2,116.)

18 Note: According to MINAMI's testimony, at
19 the time when his interrogation (Ex. #2207) was taken,
20 the prosecutor asked: "What would happen if the
21 Manchurian Government did not follow your advice?
22 In the final analysis would it not be equivalent to
23 a direction?", to which MINAMI replied: "If it be
24 taken in that way, I suppose it can't be helped."
25 However, during his tenure of office, he never once

1 gave any kind of order to the Manchurian Government
2 (p. 19,959).

3 In the preceding paragraphs, we have seen
4 how MINAMI respected and tried his best to enhance
5 the independent status of the young country. In the
6 annals of history, we will also see many an instance
7 where a country, recognized as independent under the
8 international law, welcomes advice or even direction
9 from another country. Furthermore, it had become the
10 obligation of Japan, more than her right, to protect
11 Manchukuo from surrounding menaces. As early as 1921,
12 the Mongolian People's Republic was established with
13 the support of the Red Army (see Part III, Para. 3,
14 Note (3), below) and in 1934-1935 the Communistic
15 Government in China proper was increasing its influence
16 day by day (see Part IV, Para. 3, Note (1), below).

17 It was MINAMI's duty, as representative of
18 Japan in Manchukuo, to see the young State grow up
19 healthy and strong, which duty he carried out without
20 excess and without negligence, as required under
21 authority from the Japanese and Manchukuoan Governments.

22 Section 6. North China Questions.

23 1. It is alleged by the prosecution: "While
24 Commander in Chief of the Kwantung Army and concurrently
25 Ambassador to Manchukuo - December 10th, 1934, to March

6th, 1936 - MIYAKI conspired to further aggression
1 against China, which resulted in the acquiring of the
2 four provinces of North China. This is indicated by
3 the excerpts from the records of the Japanese Foreign
4 Ministry (Ex. #2206-A), and he admitted that his
5 troops went beyond the Great Wall (Ex. #2207)" Mr.
6 Coryns Carr, p. 16,868).

7
8 First of all, it is misleading to say that
9 Ex. #2206-A are excerpts from the records of the
10 Foreign Office, for they are nothing but newspaper
11 clippings allegedly found in the files of the Foreign
12 Office. We recall the President's remark on them as
13 follows: "Colonel Woolworth, when you began to read
14 this document, we treated it as a series of news items
15 in which there would be statements by the accused, or
16 some of them, or statements by those associated with
17 them, but to a very large extent there are no such
18 statements ---Some of the extracts have nothing at
19 all in them that seem to connect the accused with
20 any allegation ---(p. 15,777). We are wasting much
21 time about material which many of us, if not all of
22 us, think little or no value" (p. 15,783).

23
24 Note: KAWABE pointed out mistakes, in Ex.
25 #2206-A as follows: "(a) The article to the effect
that War Minister HIYASHI reiterated in Mukden that

1 the North China problem was to be handled by the
2 Kwantung Army (New York Times, June 6, 1935) is
3 entirely a fabrication. In view of distinct system
4 of command and duties of the Kwantung Army and the
5 North China Army respectively, War Minister HAYASHI
6 would absolutely never have made such a statement.
7 (b) The articles to the effect that General MINAMI
8 issued instructions to the Kwantung Army to hold
9 themselves ready to pour into China (Tribune, June 9,
10 1935; Sacramento Tribune, June 8, 1935; Oakland
11 Tribune, June 9, 1935) are also false. Such
12 instructions could not be given without a directive
13 from the Supreme Command, a directive which, if any,
14 would surely have been brought to the witness's
15 notice as a matter of function. (c) The article to
16 the effect that the Kwantung Army moved 5,000 troops
17 from Mukden to Shanhaikwan (New York Times, June 13,
18 1935) is also false. The Kwantung Army was in such a
19 condition at that time as it was inconceivable to
20 concentrate so many troops at one spot. (d) The
21 article to the effect that the army requested Prince
22 Teh of Inner Mongolia to move his capital to a place
23 180 miles to the north of Pailingmiao (New York
24 Herald Tribune, June 2, 1935) is also false. (e)
25 Besides the above-mentioned items and with regard to

1 matters not directly connected with the Kwantung
2 Army, I find many records which are totally beyond
3 the witness's experience and knowledge of the
4 Japanese Army in general" (Ex. #3434, p. 32,897).

5 2. In his interrogation (Ex. #2207) MINAMI
6 replied "Yes" to the prosecutor's question whether
7 or not some of his troops went beyond the Great Wall,
8 while in his affidavit (Ex. #2435) he stated that
9 during his tenure of office there was never a case
10 of Japanese troops crossing the border. And MINAMI
11 testified that both statements were true (p. 19,977).
12 What he meant by this enigmatic answer was that since
13 his unfortunate experience as War Minister at the time
14 of the Manchurian Incident, wherein occurred the arbitrary
15 crossing of border by the Korean Army and the difficulty
16 of maintenance of understanding between the central
17 authorities and the army on the spot, he was firmly
18 resolved not to let his troops trespass on any foreign
19 soil (pp. 19,978-19,979). On the other hand, Chinese
20 bandits frequently came through the Great Wall and
21 created disturbances among the inhabitants of Manchukuo.
22 On these occasions, a portion of the army might, of
23 necessity, have crossed the border in order to mop
24 up the bandits. He gave, however, repeated instructions
25 to his troops, prohibiting even such unavoidable

1 movements (p. 19,977). In this connection, KAFRBE
2 emphatically denies TIMKI's statement that two brigades
3 were sent to the demilitarized zone, south of the
4 Great Wall (Ex. 3434, pp. 2,118-2,119) and that two
5 battalions of cavalry were sent to Chahar (p. 2,118).
6 The only instance of the crossing of border occurred
7 in the beginning of summer, 1935, when a small unit
8 (about one or two companies), operating against a
9 strong bandit force near the frontier of Jehol, moved
10 into the demilitarized zone in pursuit, but withdrew
11 immediately within the border (pp. 32,897-32,898).

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Note: According to ITAGAKI's testimony, the Kwantung Army, from the viewpoint of defense against the U.S.S.R., was interested in the North China problem to secure peace in the rear in case of emergency, but even that interest was diverted to concentrate on the defense of the northern and internal fortification of Manchukuo toward December 1935. Accordingly, it was by no means a fact that the Kwantung Army sent troops to North China (p. 30,291).

3. According to the testimony of KUWASHIMA (then Director of the East Asiatic Affairs Bureau of the Foreign Office), MINAMI neither acted contrary to the Foreign Minister's instructions, nor ever sent an ultimatum to the Chinese (pp. 29,500-29,501). KAWABE testified that while he was a staff officer of the Kwantung Army there was no such fact as the Kwantung Army issued anything like an ultimatum to China or brought a similar pressure to bear upon her. (Ex. 3434, p. 32897).

It may seem, at first sight, that this evidence is contradictory to exhibit 3317-A and 3318-A, Kwantung Army's orders of November 12 and 16, 1935, to concentrate near Shanhsikwan a part of troops and of the air force in order to cooperate with the China Garrison Army in case of need (p. 30391, p. 30395).

1 The prosecutor, introducing the said exhibits in
2 ITAGAKI's case, apparently wished to connect the
3 motive of this concentration with the alleged threat
4 by DOHIHARA that if his demand for the establishment
5 of a new autonomous State of North China were not
6 accepted by noon of November 20, 1935, he would cause
7 the troops to march into North China and to remove
8 Emperor Pu-Yi from Changchun to Peking (pp. 30387-
9 30388, p. 19996). But, where is the evidence that
10 DOHIHARA made such a threat?

11 On the contrary, Chinese General Ching Teh-
12 Chun testified that probably there was such a fact
13 that General Sun Chih-Yuan very greatly welcomed the
14 establishment of the Hopei-Chahar Political Council
15 and that he had given voice to the principle of respect-
16 ing the will of the people and the maintenance of
17 harmony between Japan and China (pp. 2367-2368). Even
18 in exhibit 199, entitled as "Facts of Japanese Aggres-
19 sion in North China," General Ching never accused the
20 Kwantung Army of any ultimatum, nor did he mention
21 any concentration of troops as menace to North China
22 (pp. 2311-2317).

24 ITAGAKI testified that these troop movements
25 were ordinary peace time movements (p. 30395). It is
a well-known military practice of any country that

1 maneuvers are conducted upon a hypothesis of an advance
2 vis-a-vis an imaginary enemy under certain conditions.
3 The true intention of MINAMI is clearly indicated by
4 the reported words of Foreign Minister HIROTA on
5 November 30, 1935, as follows: "There is no need to
6 worry so much about the situation in North China."
7 General MINAMI has clearly told me: "In the event
8 of ever despatching troops south of Shanhaikuan, it
9 would naturally be based upon an Imperial command.
10 Troops will definitely not be sent south of Shanhai-
11 kuan as long as there is no Imperial Command to do
12 so." (Ex. 3779, pp. 37674-37675).

13 Note: (1) Exhibit 3317-A states: "We
14 decided to concentrate a part of the forces outside
15 the Great Wall" (p. 30391) and exhibit 3318-A reads:
16 "The Army intends to gather part of its air force
17 outside Shanhaikuan" (p. 30394). For the sake of
18 precaution, we wish to remark that the expression
19 "outside the Great Wall" or "outside Shanhaikuan" does
20 not mean outside Manchukuo. It is a customary usage
21 in Chinese language, that "outside" or "inside" in
22 reference to a locality is always viewed from the
23 standpoint of China proper. The fact that the con-
24 centration never took place outside Manchukuo is shown
25 in exhibit 3317-A by the sentence: "However, as to

1 advancing to the south of Shanhaikuan, same shall
2 depend on army orders" (p. 30391), and in exhibit
3 3318-A by the phrase: "to advance between Shanhaikuan,
4 Suichang and Chinchow" (p. 30395). The above-named
5 places are all inside Manchukuo.

6 4. The fact that the Hopei-Chahar Political
7 Council was established in December 1935 by the initia-
8 tive of the National Government of China itself is
9 admitted by the prosecution and called "as a counter-
10 measure" (Mr. Darsey, p. 1686). Countermeasure to
11 what? The prosecution alleges that the Kwantung Army
12 implemented the policy of attraction through military,
13 political and economic pressure on the local govern-
14 ments and that the following events took place
15 (Mr. Darsey, pp. 1685-1686):

16 (a) "In January 1935 a slice of Inner
17 Mongolia was incorporated by military action into the
18 puppet state in Manchuria." However, where is the
19 evidence to prove such an allegation?

20 (b) "The military garrison at Tientsin was
21 substantially reinforced." When and from how many to
22 how many? The prosecutor himself admitted that there
23 was no provision as to the number of troops limited
24 under the Boxer Protocol (Colonel Morrow, p. 2471).
25 General Chin Teh-Chun also admitted that the complex

1 interests possessed by Japan in North China far ex-
2 ceeded those of other nations there (p. 2473). Gen-
3 eral Chin testified: "I think it does not matter very
4 much if they had seven thousand or fifteen thousand
5 men stationed there in North China. I don't remember
6 that the Chinese Government ever said that the fifteen
7 thousand Japanese troops there were in excess or the
8 Chinese Government didn't at that time complain to the
9 Japanese that their troops were too many then."
10 (p. 2473).

11 (c) "Many military incidents occurred on
12 the Manchurian, Mongolian and Siberian frontiers."
13 What kind of incidents? When and how did they happen?
14 General Chin mentions no such incident in 1935 except
15 the Northern Chahar Incident of June 1935, the matter
16 which, after some negotiation between a Japanese
17 Consul at Kalgan and a Chinese Commander of Chang Pei,
18 was referred to the Headquarters of the Japanese
19 Garrison in Tientsin (Ex. 199, p. 2312).

20 (d) "Political and economic control and
21 domination of large areas were established." Does this
22 mean the establishment of the so-called Eastern Hopei
23 Anti-Comintern Autonomous Council, in the demilitarized
24 zone prescribed by the Tangku Truce (Mr. Darsoy,
25 p. 1685)? The sole basis of the prosecution's

1 allegation is exhibit 210, which states: "By threat
2 and bribery they induced Ying Ju-Kung, then Adminis-
3 trative Commissioner, to cable the National Govern-
4 ment on November 15, 1935, asking for autonomy. . . .
5 The 22 Hsiens in the war zone were forcibly and un-
6 lawfully taken over by this puppet organization. . . ."
7 (pp. 2702-2703). This exhibit 210 is a document,
8 entitled "Summary of Japanese War Crimes in China from
9 September 18, 1931, to August 1937" and prepared by
10 the Ministry of Foreign Affairs, Republic of China,
11 apparently for the purpose of this trial. (See
12 certificate attached to the exhibit by Mr. T. C. Liu,
13 assistant prosecutor, p. 2697). We submit respect-
14 fully that such a document cannot be considered as
15 evidence in any court of law which professed to give
16 a fair trial to an accused.

17 The prosecution further alleges that "General
18 MINAMI, Commander in Chief of the Kwantung Army,
19 General UMEZU, Commander in Chief of the Tientsin
20 Army, and Colonel DOHIMARA cooperated in an effort to
21 establish an autonomous area in the provinces of North
22 China for the purpose of extending and strengthening
23 the military, political and economic domination of
24 Japan in China" (Mr. Darsey, p. 1685). It was, however,
25 only TANAKA, who named MINAMI and UMEZU as originators

1 of the autonomous movement in North China in the
2 first instance (pp. 2033-2034), and yet, TANAKA
3 testified that he had "no recollection of having
4 ever testified to Prosecutor Sackett that General
5 MINAMI was an instigator of aggressive action
6 (p. 2140).

7 5. Exhibit 195, a letter from NISHIO,
8 Chief of Staff of the Kwantung Army, to FURUSHO,
9 Vice Minister of War, under date of December 9, 1935,
10 enclosed the so-called propaganda plan of the Kwan-
11 tung Army in North China. It is said therein: "It
12 must be made clear that when we do despatch our
13 military force to China sometime in future, we do it
14 for the purpose of punishing the Chinese military
15 clique and not the Chinese people at large." (pp. 3277-
16 3278; pp. 19998-19999). According to MINAMI's testi-
17 mony, the sending or exchanging of such plans or
18 ideas between the Chief of Staff and the Vice Minister
19 is carried on internally between themselves for the
20 purpose of trying to seek a meeting of minds on
21 certain subjects. The practice of such documents
22 being sent without the knowledge or approval of the
23 commanding general frequently happened. (pp. 20003-
24 20004).
25

However, the question is not only whether he

had any knowledge thereof, but whether such a plan
1 was made in contemplation of a war of aggression.

2 The said plan states as its general principle: "We
3 start our propaganda to convince the whole world of
4 our lawfulness." (p. 2277). It is certain, therefore,
5 that the author of the said plan was himself convinced
6 of the lawfulness of an action in future against the
7 "Chinese military clique." In other words, the whole
8 plan was based upon a hypothesis of a lawful war. We
9 submit that the discussion and preparation of a propa-
10 ganda plan on such basis is no crime under inter-
11 national law.
12

13 6. According to exhibit 215 (item 5 of
14 the gist of plans in the instruction to the Commander
15 of the Stationary Troops in China from the General
16 Staff in Tokyo under date of January 13, 1936), the
17 management of matters concerning North China was
18 definitely assigned to the duty of the Commander of
19 the Japanese Garrison in Tientsin and did not belong
20 to the jurisdiction of the Commander of the Kwantung
21 Army. In line with this evidence, TANAKA testified
22 that he had seen the instruction of December 31, 1935,
23 from the Vice Minister of War to the Chief of Staff
24 of the Kwantung Army, to transfer DOHIHARA from the
25 Kwantung Army to the North China Army. The reason

1 for such transfer, according to TANAKA, was that
2 TADA, Commander of the North China Army, protested to
3 the coming of DOHIHARA, unless DOHIHARA was put under
4 TADA's command (pp. 2125-2126). Exhibit 3429, telegram
5 from the Vice Minister of War to the Chief of Staff
6 of the Kwantung Army, shows the fact that as far back
7 as November 11, 1931, there were clear distinction
8 and mutual respect between the duties of the North
9 China Garrison and those of the Kwantung Army
10 (p. 32861). It is, therefore, obvious that MINAMI's
11 authority as Commander of the Kwantung Army did not
12 extend to North China. Furthermore, he voluntarily
13 requested to be relieved from the said office of
14 commander in March and retired from the active service
15 in April 1936.

16 Section 7. The China Incident.

17 1. MINAMI was transferred to the reserve
18 list on April 22, 1936. He was appointed Governor of
19 Korea on August 5, 1936. He took this office not as
20 a soldier but as a civilian. All military affairs
21 were under the exclusive charge of the Commander of
22 the Korean Army, and MINAMI devoted himself entirely
23 to the elevation of the status and conditions of the
24 Korean people (exhibit 2435, p. 19796). According to
25 UGAKI's testimony, the duties of the Governor of Korea

1 were more or less the same as those of governor-
2 generals of any other country. The duties comprised
3 all kinds of work, except military matters, and had
4 no connection with troop movements of the Korean
5 Army (pp. 1624-1625).

6 2. Exhibit 2437, a letter of September 23,
7 1938, from MINAMI to Foreign Minister UGAKI, has been
8 produced by the prosecution as if to show that MINAMI
9 had some connection with the Sino-Japanese Incident
10 which broke out on July 7, 1937. The letter indicates,
11 however, that he had been merely a bystander of the
12 whole affair, without any particular knowledge thereof
13 other than newspaper reports. He used the words
14 "holy war," because it was the commonly used expres-
15 sion of newspapers, etc. of the time. MINAMI did not
16 believe that the Sino-Japanese Incident was an aggres-
17 sive war but thought these hostilities were caused by
18 unavoidable circumstances (p. 20014). Furthermore he
19 wanted to have the hostilities cease as soon as pos-
20 sible. He believed that the recognition of a pro-
21 Japanese regime in North and Central China simultaneous-
22 ly with the fall of Hankow would bring about the
23 desired peace there and then (p. 20012).

24 The Japanese Government had already made its
25 policy clear to the world since the KONOYE Declaration

1 of January 16, 1938, that while Japan would respect
2 the territoriality and sovereignty of China and the
3 rights and interests of the powers in China, she
4 would not care for the Chiang Regime but would expect
5 the establishment of a new government really worthy
6 for cooperation in the establishment of peace.

7 (Ex. 268, p. 3463). As MINAMI is a true old Japanese,
8 he would never dream of doubting the face value of a
9 governmental proclamation. The gist of his letter
10 to UGAKI is clearly embodied in the first and the last
11 sentences thereof: "Sir: Approximately one year has
12 passed since the outbreak of the Sino-Japanese Inci-
13 dent (p. 20012). * * * it is my wish to have your
14 Excellency make final judgment on this point. Yours
15 respectfully." (p. 20013). In plain words it can only
16 mean: "Why don't you finish with the Incident right
17 now?"
18

19 He would not write such a letter to any other
20 person except UGAKI, who had been his intimate senior
21 and by whose recommendation he succeeded to the posts
22 of War Minister in 1931 (Ex. 2435, p. 19777) and of
23 Governor of Korea in 1936 (p. 19796). Curiously, these
24 two generals never liked war. Both of them exerted
25 their efforts in cutting down army expenditures and in
suppressing political intrigues of young officers

1 (see Part I). They were in agreement with the
2 "friendship diplomacy" rather than with the expansion
3 policy of militarists. At least, they had a sense of
4 proportion more than any of their colleagues and
5 juniors. It was only destiny which prevented them
6 from success in stemming the torrential overflow of
7 the national enthusiasm in those days.

8 3. In the course of his interrogation
9 (Ex. 2207), MINAMI said: "I might explain that in
10 the last fifteen years the thing I have been most
11 against was our war with China, as I felt that the
12 peace of Asia could not be maintained unless Japan
13 and China remained at peace." (p. 20007). When, how-
14 ever, the question became that of the national
15 prestige, no statesman could control the situation,
16 just the same as the case of individuals wherein
17 personal honor is involved.

18 It is alleged by the prosecution that "General
19 MINAMI was one of those at the bottom of the conspir-
20 acy for aggression against China, and that he was an
21 important figure in future plans for aggression."
22 (Mr. Comyns Carr, p. 16869). We submit, however, that
23 the prosecution has failed to establish any such fact
24 and that MINAMI is innocent of any crime under Counts
25 2, 3, 6, 18, 27 and 28. He served as War Minister

under Premier WAKATSUKI in 1931 and as Commander of
1 Kwantung Army and Ambassador to Manchukuo under
2 Premier OKADA in 1935. Both WAKATSUKI and OKADA are
3 free from any charge of conspiracy against China and
4 both of them never accused MINAMI with such a conspir-
5 acy, when they were called to the Tribunal as prosecu-
6 tion witnesses (see Part I, Par. 3, Note (2), para-
7 graphs 4 and 7; Part II, Section 5, Para. 2, Note (3),
8 above).

10 Note: According to MURATA's testimony, no
11 decoration was awarded to MINAMI "for services in
12 China affairs," except a pair of silver cups (small
13 ones for sake) on April 29, 1940 (Ex. 3437, p. 32928).
14 Those who were granted rewards in the Manchurian
15 Incident total 452,826, among whom are WAKATSUKI,
16 SHIDEHARA, UGAKI, HAYASHI, MORISHIMA and TANAKA. Those
17 who were granted rewards in the China Incident total
18 3,319,548 (Ex. 3147, pp. 28029-28032).

19
20 Now with the Tribunal's permission,
21 Mr. OKAMOTO will continue with the reading of Parts
22 III and IV.

23 THE PRESIDENT: Mr. OKAMOTO.

24 PART III. Counts 7-17, 29-32 and 34.

25 MT. T. OKAMOTO: These Counts charge MINAMI
with the planning and preparing of an illegal war since

1 January 1, 1928, against the U.S.A., Great Britain,
2 Australia, New Zealand, Canada, India, the Philippines,
3 the Netherlands, France, Thailand and the U.S.S.R.
4 (Counts 7-17), and with the waging of an illegal war
5 since December 7, 1941, against the U.S.A., the
6 Philippines, the British Commonwealth, the Netherlands
7 and Thailand (Counts 29-32 and 34).

8 1. In accordance with the chronological
9 order, we shall first take up the question vis-a-vis
10 the Soviet Union. The prosecution produced exhibit
11 2436, instruction of October 6, 1927, by MINAMI, as
12 Vice-Chief of the General Staff, to KOMATSUBARA,
13 military attache at the Japanese Embassy in the
14 U.S.S.R. to investigate special organizations,
15 associations and important individuals who might be
16 used for the gathering of intelligence information,
17 for propaganda, and for subversive activities
18 (pp. 19943-19944).

19 MINAMI testified that military attaches
20 were under the direct control of the Chief of the
21 General Staff, that a Vice-Chief attended to business
22 matters and transmitted orders from the Chief as a
23 routine work, and that the principal duty of military
24 attaches of every country was to conduct intelligence
25 activities (pp. 19944-19945). Was MINAMI's instruction

1 anything extraordinary from the standpoint of such
2 a custom? Any country must have a plan and a certain
3 kind of preparation for its national defense. For
4 such purpose, informations must be gathered from
5 others while every care should be taken to guard its
6 own. It is true that each country has its laws to
7 punish spies, but never has the international law
8 tried to condemn them in peace time. In the case of
9 the United States ex rel. Wessels v. McDonald,
10 Commandant of Brooklyn Navy Yard, the District Court
11 said in 1920: "An alien serving as a spy is not
12 guilty of any crime against the country which he is
13 seeking to undermine by his acts or conduct as the
14 term crime is used in the international law. Of
15 course, if he serves as a spy against his own
16 sovereignty, he may be found guilty of crime under
17 the law" (265 Fed. 754, 762-763 (E.D.N.Y., 1920);
18 dismissed, per stipulation, 253 U.S. 705 (1921);
19 quoted in the Digest of International Law by J. H.
20 Hackworth, 1943, Vol. VI, p. 308).

21
22 Note: (1) "A spy may not be tried under
23 the international law when he returns to his own
24 lines, even if subsequently captured, and the reason
25 is that, under the international law, spying is not a
crime, and the offense which is against the laws of

1 war consists of being found during the war in the
2 capacity of a spy" (Hackworth, ditto, VI, pp. 307-
3 308).

4 Note: (2) The Hague Convention No. 4 of
5 October 18, 1907, provides that ruses of war and the
6 employment of measures necessary for obtaining in-
7 formation about the enemy and the country are con-
8 sidered permissible (Article 24) and defines the
9 treatment of a spy in the war time (Articles 29-31).

10 2. In the course of cross-examination of
11 MINAMI, the President put a few questions referring
12 to exhibits 691, 698 and 703 and there was some con-
13 fusion in the showing of the right document to the
14 witness (p. 20037, p. 20042, p. 20044). Exhibit 691-A
15 is a report by Colonel SUZUKI in May 1931 of his
16 inspection tour of Manchuria and Korea in accordance
17 with an instruction given on March 16, 1931, by the
18 Chief of the First Department of the General Staff
19 (pp. 7438-7440). In March 1931 MINAMI was a Councillor
20 and in May the War Minister (Ex. 116). In both
21 capacities, MINAMI had no connection with the in-
22 struction or with the report made within the juris-
23 diction of the General Staff (see Part II, Section 2,
24 Par. 3, Note (4) above).
25

Exhibit 698 is a report by Major KANDA of

1 the Harbin Intelligence Service in 1927 to Colonel
2 KAWAMOTO, officer in charge of intelligence of the
3 Kwantung Army, referring to KANDA's study of methods
4 of strategy vis-a-vis Soviet Russia (p. 7464;
5 Ex. 3852, p. 38239). The report was also sent to
6 Major KASAHARA, then Chief of the Russian Section
7 of the Second Department of the General Staff
8 (pp. 7463-7464). KASAHARA testified that this docu-
9 ment was prepared by KANDA in his private capacity
10 (p. 7463) and the study was an individual research
11 (p. 7630). "If this had been an official document,"
12 KASAHARA stated, "it should have been sent under the
13 name of the Chief of the Harbin Special Mission
14 Service through the Kwantung Army to the General
15 Affairs Bureau of the General Staff in Tokyo. Without
16 these indications, it would not be an official docu-
17 ment. * * * It is only the result of a private
18 research sent to a private person; in this case,
19 myself" (p. 7631). " * * * and I have not shown it
20 to my superiors" (p. 7634). It is, therefore, natural
21 for MINAMI to reply: "I do not recall that," to a
22 question of the President's: "Did you read that
23 document for the first time in 1928 when you were
24 Vice-Chief of the Army General Staff?" (p. 20044,
25 see also pp. 20089-20090). KASAHARA testified also

1 that any of these plans as to sabotage activities
2 were never put into action (p. 7637).

3 3. Exhibit 703, the affidavit of USHIROKU,
4 will not be taken into consideration of the Tribunal
5 under the ruling of November 17, 1947 (p. 33236).

6 In any case it is stated by USHIROKU that the plan
7 vis-a-vis Soviet Russia was drawn up by Lieutenant
8 General IMAI, Kiyoshi, Chief of the First Department
9 of the General Staff, and approved by Field-Marshal
10 Prince KANIN, Chief of the General Staff, and also
11 sanctioned by the Emperor in March 1935 (p. 7519).
12 MINAMI mistook this as an emergency plan of opera-
13 tions of the Kwantung Army (pp. 20037-20039), but
14 such mistake was corrected later (p. 20044, pp. 20089-
15 20090).

16 In our submission it is the sovereign
17 right of an independent country to prepare a plan
18 for its national defense against a hypothetical
19 enemy. In the case of the U.S.S.R., in particular,
20 many Japanese were not only chronic Russo-phobes
21 (see Part II, Section 1, Par. 1, (Note (1) above),
22 but had, as matter of fact, suffered severely from
23 subversive activities of Communists both at home and
24 abroad, especially in China (Ex. 57 (pp. 20-23),
25 pp. 18694-18696).

Note: (1) "Communism in China not only
1 means, as in most countries other than the U.S.S.R.,
2 either a political doctrine held by certain numbers
3 of existing parties, or the organization of a special
4 party to compete for power with other political
5 parties. It has become an actual rival of the
6 National Government. It possesses its own law,
7 army and government, and its own territorial sphere
8 of action. For this state of affairs there is no
9 parallel in any other country. * * * So far as Japan
10 is China's nearest neighbor and largest customer, she
11 has suffered more than any other Power from the law-
12 less conditions described in this chapter." (Ex. 57,
13 (pp. 22-23), pp. 18704-18706).
14

Note: (2) "As the Soviet Government and
15 the Third International had adopted a policy opposed
16 to all imperialist Powers which maintained relations
17 with China on the basis of the existing treaties, it
18 seemed probable that they would support China in the
19 struggle for the recovery of sovereign rights. This
20 development revived all the old anxieties and suspi-
21 cions of Jpan towards her Russian neighbor. This
22 country, with which she had once been at war, had,
23 during the years which followed that war, become a
24 friend and ally. Now this relationship was changed,
25

1 and the possibility of a danger from across the
2 North-Manchurian border again became a matter of
3 concern to Japan. The likelihood of an alliance
4 between the Communist doctrines in the North and the
5 anti-Japanese propaganda of the Kuomintang in the
6 South, made the desire to impose between the two a
7 Manchuria which should be free from both, increasingly
8 felt in Japan. Japanese misgivings have been still
9 further increased in the last few years by the pre-
10 dominant influence acquired by the U.S.S.R. in Outer
11 Mongolia and the growth of Communism in China"
12 (Ex. 57 (pp. 36-37), p. 18732).

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Note: (3) "Relying upon the relationship
1 of unchanging friendship which have existed between
2 their countries since 1921, when, with the support of
3 the Red Army, the territory of the Mongolian People's
4 Republic was liberated from the White Guard detach-
5 ments which were in contact with the military forces
6 which had invaded the territory of the U.S.S.R...
7 (the contracting parties) have decided to confirm in
8 the form of the present Protocol the Gentlemen's Agreement
9 existing between them since 27 November, 1934, which
10 provides for mutual support with all means in avert-
11 ing and preventing the threat of a military attack..."
12 (ex. 214, Protocol of Mutual Assistance between the
13 U.S.S.R. and the Mongolian People's Republic, March 12,
14 1936, pp. 2715, 2716).

16 4. It is clearly shown by the prosecution,
17 exhibit 214, that the Red Army invaded China and es-
18 tablished the Mongolian People's Republic as early as
19 1921, and concluded the so-called Gentlemen's Agreement
20 on November 27, 1934. There is no wonder therefore
21 that airfields were to be constructed in Manchukuo to
22 meet the danger from a possible Soviet attack. When
23 MINAMI became the Commander of the Kwantung Army between
24 December 10, 1934, and March 6, 1936, such bases were
25 nearing completion (MINAMI, p. 19,951). In North

Manchuria these construction works for defense purpose
1 were carried on, but MINAMI did not know whether they
2 were three, five, or seven (p. 19,952). Railway con-
3 struction was also going on, the principal objective
4 of which was the opening up of Northern Manchuria,
5 though occasion for its use also for defensive purpose
6 might possibly occur (p. 19,951). However, MINAMI's
7 instructions and orders were merely to assist the
8 growth of a healthy independent state under the agree-
9 ment between the countries and to preserve order and
10 security there, and these orders did not encompass the
11 building of a military base on the continent directed
12 aggressively against the U.S.S.R. and China (p. 19,953).

14 According to KATABE's testimony, "the Kwantung
15 Army at that time held the maintenance of peace and
16 order within Manchukuo as the primary duty under the
17 Japan-Manchukuo protocol. The troops were put in dis-
18 persed positions to the extreme, suffering the inade-
19 quacy from the military point of view for the defense
20 against dangers from outside of Manchukuo. Hence, the
21 disposition of the army was even more inadequate for
22 any offensive towards the U.S.S.R. or China" (ex. 3434,
23 p. 32,895).

24 On the other hand, there are exhibit 2433,
25 an agreement of September 4, 1934, between the Navigation

1 Bureau at Farbin, Manchukuo, and the Navigation Bureau
2 at Amur, U.S.S.R., concerning navigation of inland
3 waterways (p. 19,720), and exhibit 2428 and 443, the
4 final protocol of March 23, 1935, between the U.S.S.P.
5 and Manchukuo for the sale of the Chinese Eastern
6 Railway (p. 19,702), all showing the de facto recogni-
7 tion of Manchukuo by the U.S.S.R. as well as the friend-
8 ly relations then existing between the U.S.S.R. and
9 Japan. According to MINAMI's testimony, it was agreed
10 between the U.S.S.R. and MANCHUKUO that a committee be
11 appointed for the settlement of the boundary question
12 (ex. 2534, p. 19,792) and during his tenure of office
13 there was never a case of Japanese or Manchukuoan
14 troops crossing the border (p. 19,793).

15
16 Amidst the atmosphere of such peace and
17 tranquility, it is indeed impossible to conceive that
18 MINAMI with his total strength of 60,000 (ex. 2207,
19 p. 15,785), of which only 30,000 were effectives
20 (KAWABE, p. 32,905), would have planned and prepared
21 a war of aggression against the colossal forces of the
22 U.S.S.R!

23 5. As to the accusation that MINAMI ever
24 planned and prepared against the U.S.A., Great Britain,
25 Australia, New Zealand, Canada, India, the Philippines,
the Netherlands, France and/or Thailand, it is more

1 fantastic than any fiction of adventure.

2 6. As to the waging of war against the
3 U.S.A., the Philippines, the British Commonwealth,
4 the Netherlands and/or Thailand, since the outbreak
5 of the Pacific War, MINAMI was in it only as much as
6 any ordinary Japanese citizen was in it, after the
7 Imperial proclamation was issued, declaring war upon
8 the U.S.A. and Great Britain. There was no other way
9 or duty for him to choose but that of support of
10 governmental measures for the prosecution of hostili-
11 ties once war was declared by the Emperor.

12 On May 29, 1942, he was transferred from the
13 post of the Governor of Korea to that of a privy coun-
14 cillor (ex. 116), which was in fact an old men's honorary
15 asylum. On March 31, 1945, he resigned from the Privy
16 Council and became the president of the Japan Political
17 Society (ex. 2534, p. 19,798). At that time he was
18 71 years of age and nearly deaf. When the country was
19 on the verge of collapse he could not sit still in a
20 comfortable chair at the Privy Council and wished to
21 give whatever help he could to save the country from
22 ruin.
23

24 7. The prosecution says: "He was a member
25 and president of the Greater Japan Political Associa-
tion, one of the principal aims of which was the ex-

1 tension of the Greater East Asia Co-Prosperity Sphere,
2 which included India, Burma, the Dutch East Indies
3 and the Philippines, and he believed in Asia for the
4 Asiatics" (Mr. Comyns-Carr, pp. 16,868, 16,869). What
5 of it even if he so believed during his four months'
6 tenure of the presidency? All his intentions and
7 actions at the crisis of his country were based on
8 his belief that they were nothing but sheer self-
9 defense in the strictest sense of international law.
10 The fact that he never exceeded the limit thereof is
11 shown by his attitude at the time of termination of
12 the war (see PART I, para. 9). We submit, therefore,
13 that he is not guilty of any crime alleged in Counts
14 7 - 17, 29 - 32 and 34.

15
16 PART IV. Counts 44 and 53 - 55.

17 These counts charge MINAMI with conspiracy
18 to procure and permit the murder of prisoners of war,
19 civilians and crews of torpedoed ships (Count 44), with
20 conspiracy to order, authorize and permit his subord-
21 inates to commit atrocities (Count 53), with having
22 ordered, authorized and permitted the same (Count 54)
23 and with having deliberately and recklessly disregard-
24 ed his legal duty to take adequate steps to secure
25 the observance of Conventions, etc. and prevent breaches

thereof (Count 55) since September 18, 1931.

1 1. The prosecution tried to connect MINAMI
2 with P.O.W. questions by producing exhibit 1973, a
3 telegram from the Chief of Staff of the Korean Army to
4 the Vice Minister of War under date of March 1, 1942,
5 which used such words as "the Government-General and
6 the Army are both strongly desirous" of receiving
7 prisoners of war in Korea (p. 20,018; Ex. 1973, p. 14,
8 513. language correction at p. 14,512).

9 According to the testimony of ONO, who was
10 the Director-General for Political Affairs of the
11 Government-General of Korea under MINAMI from August
12 5, 1936, to May 29, 1942, matters relating to P.O.W.
13 was under the jurisdiction of the Commander of the
14 Korean Army who was directly under the control of the
15 Emperor, and therefore neither the Governor-General
16 nor the Government-General ever concerned themselves
17 with such matters. The Government-General was once
18 requested by the army to find some accommodation for
19 P.O.W.'s if they were brought to Korea, but that was
20 all. The Government-General had no concern with the
21 purpose why P.O.W.'s would be brought to Korea, and so
22 there was no such case for expressing any desire
23 referring to P.O.W. (ex. 3435, pp. 32,920 - 32,921).
24 According to MINAMI's testimony, he received a report
25

1 from one of his subordinates that the Government-
2 General was asked by the army to provide accomodation
3 for P.O.'s and that some school buildings were
4 suggested by an official in the Government-General
5 (p. 20,020).

6 2. As the prosecution admits, P.O.'s did
7 not arrive at Korea until after MINAMI left (p. 20,021)
8 and the suggested buildings were such as the War
9 Minister and the Vice War Minister thought were too
10 good for use for prisoners of war (pp. 20,020 - 20,021;
11 ex. 1974, p. 14,514). Exhibit 1975, telegram of August
12 13, 1942, from IBARA, Chief of Staff of the Korean
13 Army, to KIYURA, Vice-Minister of War, has nothing to
14 do with MINAMI, because it reports only the state of
15 affairs after his departure from Korea (pp. 14,521 -
16 14,529).

17 3. The prosecution alleges: "While Governor
18 of Korea he approved the sending of prisoners of war
19 to Korea for illegal purposes, as is shown by the
20 correspondence between General ITAGAKI and the War
21 Ministry (ex. 1973, 1974, and 1975)" (Mr. Comyns-Carr,
22 p. 16,869). Such an allegation cannot be sustained
23 unless something is distorted. As there is no support-
24 ing evidence to connect MINAMI with the charges men-
25 tioned in counts 44 and 53 - 55, we submit that he

is innocent of all of them, with the utmost confidence.

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CONCLUSION

Reviewing back the evidence presented to the Tribunal since the beginning of this trial, we cannot help but remark that the charges against MINAMI are based on mere rumors and hearsay, and that he is accused of the very acts which he exerted himself to prevent. All the direct evidence, either oral or documentary, point only to the fact that he did his duty at every stage of his career, neither exceeding his authority nor ever negligent thereof. If patriotic devotion to duty and believing in the declarations of one's government agencies is to be any offence either national or international, we have to submit that there can be no stability or security from injustice for the citizens of any nation in the world.

In conclusion, we shall make a few comments on the prosecution's summation against MINAMI (NN-1 to 35).

1. It is alleged: "He knew or should have known of the March Incident, and he knew or should have known that the War Office was represented in the Sakura-kai, and that the aims of the Sakura-kai were to carry out an internal revolution and settle the Manchurian problem" (NN-4), on the strength of TANAKA's

testimony (p. 1963). TANAKA's testimony is based,
1 even if we believe him, on the talk of Captain CHO in
2 Shanghai, after the Manchurian Incident (p. 1963).
3 According to TANAKA, the Sakura-kai was first organized
4 on October 1, 1930, by lieutenant-colonels and majors
5 of various branches of the military service (pp. 1961 -
6 1962), and "the meeting on October 1 did not touch at
7 all on Manchurian problems" (p. 1962). The so-called
8 March Incident in March, 1931, was suppressed by UGAKI,
9 then War Minister, without any actual harm done to any-
10 body (SHIMIZU, exhibit 157, p. 1404). When MINAMI
11 became War Minister on April 14, 1931, there was nothing
12 left for him to deal with. On the other hand, the firm
13 resolution of MINAMI to prohibit all these activities
14 within the army is clearly shown by a lecture of TOYAMA,
15 Provost Marshal of Tokyo, given to his subordinates on
16 August 19, 1931, whereby the military police was ordered
17 to cooperate in the guidance of young officers and to
18 stave off any ill effects upon military discipline
19 (ex. 3416, pp. 32,810 - 32,812, see PART I, para. 4,
20 Note above). In the latter part of September, 1931,
21 such dangerous characters as SHIMIZU and others were
22 arrested and put in jail (ex. 157, p. 1405). On October
23 17, 1931, HASHIMOTO and other young officers were
24 apprehended and the so-called October Incident was
25

1 nipped in the bud (FASHIMOTO, p. 28,791, WAKATSUKI,
2 p. 1568, see PART I, para. 4, above). What else more
3 could a War Minister do to assist in the maintenance
4 of military discipline?

5 2. It is further alleged: "It would seem
6 that the slightest consideration of the matter on the
7 part of MINAMI would have caused him to make sure that
8 TATEKAWA was then the Chief of the First Department
9 of the General Staff (KAWABE, p. 19,424) and it was but
10 natural that he was despatched to Manchuria by orders
11 of KANAYA, Chief of the General Staff (KOISO, p. 32,207;
12 MINAMI, p. 19,821; see PART II, Section 1, para. 7.
13 above). There is no reason why MINAMI should have
14 distrusted such a high ranking officer nor why he
15 should have questioned KANAYA's choice of this messenger
16 to the Kwantung Army. Article 2 of the Kwantung Army
17 Headquarters Regulations explicitly provides: "The com-
18 mander shall be under the delegated command of the War
19 Minister in the matters of military administration
20 and personnel affairs and under the command of the
21 Chief of the Army General Staff in the matters of
22 military operations and mobilization plan and under
23 the Inspector-General of the military education in the
24 matters of military education (ex. 2415, pp. 19,554-19,
25 555). As the rumor of activities in Manchuria were

concerned with operations and mobilization plans rather than matters of military administration (see PART II, Section 1, paras. 6 and 7, above), the responsibility to investigate the situation on the spot and to caution the Kwantung Army against any inadvertence must have fallen within the jurisdiction of the Chief of the General Staff. Furthermore, the honest belief of MINAMI referring to the integrity of senior members of the army is shown clearly by exhibit 3416, in which Provost Marshal TOYAMA said: "It seems to me that the reason why the said tendency absorbs the attention of young officers lies in the mistaken supposition that their activities are lead by the higher authorities of the army. Not only, however, is that not a fact, but the War Minister is firmly resolved to prohibit all these activities within the army" (pp. 32,812-32,813). How could MINAMI have known that TATKATA was the alleged person responsible for releasing the bombs to OKATA, as alleged by the prosecution? It is submitted respectfully that the prosecution is assuming too many presumptions without foundation.

3. The prosecution's allegations in NN-5 to 7 are fully met by our contentions in PART I, para. 5, Note (1), para. 6, Notes (1) and (2), above. Further-

1 more, there is no evidence to support such allega-
2 tions, for instance, as "studies being made in the War
3 Ministry prior to the Manchurian incident, concerning
4 the conquest of Manchuria" or "a group in the army led
5 by Lt. Colonel HASHIMOTO and SHIGEMITSU had become so
6 powerful between July and October, 1931, that the
7 army could not check such persons and difficulty was
8 even had in drafting a budget" (NN-7). Neither the
9 War Minister nor the War Ministry can be responsible
10 for all letters or demands or suggestions addressed
11 to him or to the Ministry. In order to establish
12 MINAMI's guilt under the said charges, it must be shown,
13 first of all, that he approved the purport of such
14 letters, demands or suggestions. The evidence shows,
15 on the contrary, that the Kwantung Army's demands were
16 rejected by the central army authorities (ex. 3316,
17 p. 30,258; ex. 2884-A, p. 22,110), that officers'
18 salaries were cut down from 5.8% for first lieutenants to
19 12% for generals (ex. 3414, p. 32,803), that mobilizable
20 strength for wartime was reduced from 32 to 28 divi-
21 sions (ex. 3375, p. 32,803) and that HASHIMOTO and
22 others were arrested during September and October,
23 1931 (see para. 1 above).

24
25 4. In NN-8, it is alleged: "SHIDEHARA
testified that prior to the Mukden Incident he noti-

fied MINAMI that he had received a cable from the
1 Japanese Consul General in Mukden that within a week
2 a big incident would break out. It was at this point
3 that the officers responsible for the situation should
4 have been dealt with appropriately if MINAMI really
5 desired to stop an incident." It must be pointed out
6 that SHIDEHARA never testified to the effect such as
7 quoted by the prosecution (see PART II, Section 1,
8 paras. 6 and 7, above) and that the person who said
9 something to that effect was TANAKA, Ryukichi, who
10 heard in 1934 from TATEKAWA that such a conversation
11 took place between SHIDEHARA and MINAMI (pp. 2003 -
12 2006). It is obvious that no War Minister in any
13 country would deal with officers on the basis of a mere
14 rumor, without carrying out proper investigations.
15 The prosecution also alleges: "The record, however,
16 does not show that MINAMI, the 'doubting Thomas' did
17 a single thing to stave off the event, which was so
18 notoriously bruited about that the Foreign Office, the
19 General Staff and the War Minister in Tokyo knew approxi-
20 mately when it was to take place, and what was to
21 happen." (NN-9). "What an amazing accusation! The
22 record abounds with evidence of his bona fides and his
23 effort to stave off any untoward event (see PART II,
24 Section 1, paras. 6 and 7, above). It is only the
25

"doubting" prosecutor who does not see them. It is

1 further alleged: "The sum and substance of the matter
2 is that the SHIDEHARA policy of conciliation was thrown
3 overboard and a new political force emanating from the
4 army came into play, aided and abetted by MINAMI"
5 (NN-10). This allegation is, however, entirely contra-
6 dictory to testimony of prosecution witnesses WAKATSUKI
7 (p. 1571, p. 1583) and SHIDEHARA (p. 1328, p. 1338)
8 and has no foundation except hearsay. In our sub-
9 mission, all direct evidence point to MINAMI's innocence
10 of any complicity in the alleged conspiracy (see PART I,
11 paras, 8 and 10).
12

13 THE PRESIDENT: We will recess for fifteen
14 minutes.

15 (Thereupon, at 1045, a recess was
16 taken until 1100. after which the proceed-
17 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. OKAMOTO.

4 MR. T. OKAMOTO: I resume reading on page 179,
5 at the bottom.

6 5. The allegations in NN-11 to 13 are fully
7 refuted by our contention in Part II, Sections 2 and
8 3, above. We wish also to call the attention of the
9 Tribunal to Article 3 of the Kwantung Army Regulations
10 enforced on and from April 12th, 1919, which provides:
11 "The commander may resort to force when he deems it
12 necessary for the defense of Kwantung Province and
13 for the protection of the railways" (Ex. 2415,
14 T. 19,554-19,555). This will show that HONJO acted
15 within his authority when he decided at his own dis-
16 cretion to use force on the night of September 18th,
17 1931. Contrary to the allegation of the prosecution,
18 MINAMI never attempted to whitewash himself and place
19 all responsibility on the Supreme Command (NN-12).
20 He frankly admits that he was responsible for all
21 military administrative matters (T. 19,917-19,918,
22 see Part II, Section 4, Para. 7, above). This fact
23 is clearly endorsed by the provisions of Article 1
24 of the above-mentioned Regulations (see Para. 2, above).
25 As to the operational matters, the War Minister was

the liaison man between the Cabinet and the Supreme

1 Command, He transmitted the wish of the Cabinet to
2 the Chief of the General Staff, but he could not
3 compel the latter to accept it. He cannot be held
4 responsible for matters which were under the exclusive
5 control of the Chief of the General Staff who was
6 directly responsible to the Emperor (see Part II,
7 Section 2, Para. 2, Notes (1)-(5); Section 4, Para. 15,
8 Notes (1) and (2), above). However, in spite of all
9 the difficulties, arising from the peculiar position
10 of the War Minister under the Japanese Constitution
11 (see our motion to dismiss, T. 16,460-16,463),
12 he succeeded in upholding the non-expansion policy
13 by prohibiting through the Chief of the General Staff
14 the dispatch of troops either to Harbin or to Chinchow.
15 On the other hand, he failed in restoring the status
16 quo in the face of the rapidly changing situation in
17 Manchuria, for it was humanly impossible for him to
18 stop the torrential overflow of a long pent-up antagon-
19 ism between China and Japan. That is why he resigned
20 on December 10th, 1931, after 83 days of a hard
21 struggle for the maintenance of the aforesaid Govern-
22 ment policy.
23

24 6. As to the hearsay reports of the HARADA
25 Memoirs, they are, in our submission, completely refuted

in our contention in Part II, Section 1, Para. 6,
1 above. We wish, in addition, to refer to the testimony
2 of ABO, who was the Navy Minister in 1931 and who
3 attended all the Cabinet meetings held until the
4 resignation of the Cabinet. He deposes that neither
5 at any of the said Cabinet meetings nor on any other
6 occasion did he hear War Minister MINAMI say such
7 words as withdrawal from the League of Nations or
8 determination to wage war against the whole world
9 (Ex. 3882, T. 38,707-39,709).

10 7. Our contention in Part II, Section 4,
11 above will meet the prosecution's allegations in
12 NN-14 to 22. TANAKA's testimony, quoted in NN-16, is
13 refuted by SHIDEHARA, as "a mischievous rumor"
14 (T. 33,551, see Part I, Para. 8, Note, above). The
15 fact that MINAMI fought for the principles of the
16 YAKATSUKI Cabinet and resigned together with the
17 Cabinet, have been testified by three ex-Ministers
18 of the said Cabinet, i.e., Premier YAKATSUKI, Foreign
19 Minister SHIDEHARA and Navy Minister ABO. There
20 remains only another member of the Cabinet, still
21 living in Kumamoto on the island of Kyushu, i.e.,
22 Home Minister ADACHI, who would have testified to the
23 same effect, although we could not produce his evidence
24 before the conclusion of our case. Furthermore, we
25

1 pray the Tribunal to study carefully those we were
2 able to locate of the many telegraphic instructions
3 sent from MINAMI to HONJO (See Part II, Section 4,
4 Paras. 4, 5, and 13) and from SHIDEHARA to KUROASHIMA
5 (see Part II, Section 4, Para. 10). MINAMI's sincerity
6 to cooperate with the Cabinet and his anxiety to keep
7 the Kwantung Army within the bounds of propriety are
8 very well expressed in the correspondence produced
9 by both the prosecution and the defense. It is respect-
10 fully submitted, therefore, that to accuse MINAMI of
11 having approved aggressive actions in direct conflict
12 with the Cabinet policies (NN-17) or of having wanted
13 things to happen as they did in Manchuria (NN-20)
14 is nothing but a malicious interpretation of evidence
15 to incriminate him because of his position as Japan's
16 War Minister at that time.

17 8. There is another example of distortion
18 of fact by the prosecution in saying that "in view
19 of MINAMI's continued activity for the War Department
20 as a direct representative of War Minister ARAKI, his
21 report to the Emperor of his findings, and his being
22 "tutor" to Prince Kan-In, he was far from being the
23 inactive person he sought to paint himself" (NN-22).
24 He went on the inspection tour of Manchuria, of course,
25 "on order from War Minister ARAKI" (T. 19,922), because

1 he, as a military man, could not go there unless the
2 War Minister gave permission. Is there any evidence,
3 however, that he continued activity as a direct
4 representative of ARAKI? Would a military councillor
5 in his official capacity report to the Emperor at a
6 tea party? When we see the quotation marks put to the
7 word "tutor" and the underline to the name Kan-In, we
8 cannot help but smile at the far-fetched imagination
9 of the prosecution. Is the prosecution suggesting
10 thereby that this Prince Kan-In was the man who
11 became the Chief of the General Staff after KANAYA
12 in 1932? We would like to suggest that the prosecution
13 should be more careful in reading the evidence, for
14 exhibit 2435 clearly shows the words: "s tutor to
15 the young Prince Kan-In" (T 19,790). The young
16 prince (named HARUHITO in the family of Kan-In) was
17 born in August 3rd, 1902, as the second son of the old
18 Prince Marshal Kan-In who succeeded KANAYA in the post
19 of the Chief of the General Staff. At that time, the
20 young prince was a lieutenant in cavalry, attending
21 the Military Staff College. MINAMI was appointed as
22 HARUHITO's tutor, for no other reason than MINAMI was
23 a cavalry veteran. It was, indeed, beyond our thought
24 that the prosecution would mix up the young and the
25 old, until we read the paragraph marked NN-22 of the

1 prosecution's summation. If the Tribunal thinks such
2 an obvious fact need proof, we are prepared to produce
3 it at any time.

4 9. The prosecution remarks that "his sudden
5 emergence as Commander of the Kwantung Army in
6 December, 1934, illustrates in no uncertain manner
7 his importance in the chain of events centering around
8 Manchuria . . ." (NF-22). His sudden emergence is no
9 wonder when we think about his seniority in the group
10 of generals at that time and also the policy of the
11 OKADA Cabinet towards Manchuria. Prosecution witness
12 OKADA testified that his cabinet was in opposition
13 to the army policy of the use of force in connection
14 with the expansion of Japanese influence in Asia
15 (T. 1,823-1,824, see Part II, Section 5, Para. 2,
16 Note (4) above). On the other hand, his sudden
17 emergence is quite conspicuous when we take into con-
18 sideration the testimony of prosecution witness
19 TANAKA that MINAMI was appointed to the post because
20 of his very amiable character and administrative
21 ability (see Part II, Section 5 Para. 2, Note (1)
22 above).

23 10. The question whether he exercised
24 "absolute control over the military and diplomatic
25 affairs of Manchukuo" (T. 19,963) or he exercised

such control "as far as Japan was concerned" (T. 19,962),

1 is, in our submission, not so important as the question
2 whether he exceeded his authority, given by the Japanese
3 Government and acknowledged by the Manchurian Govern-
4 ment. This question has been fully discussed in Part
5 II, Section 5, above. We wish only to point out the
6 mistake of the prosecution in alleging that "not
7 satisfied with this admitted system of control over
8 the internal and external affairs of Manchukuo, MINAMI
9 knew that such control was tightened by a preponder-
10 ance of Japanese on the General Affairs Board of
11 Manchukuo, . . ." (NI-23). It was MINAMI who abolished
12 the Special Service Department, which was initiated
13 at the time of TADA, then adviser to the War Depart-
14 ment of Manchukuo (Ex. 3378A, T. 32,357-32,372). We
15 shall quote, in order to avoid any misunderstanding,
16 the exact answer of prosecution witness TANAKA here-
17 under:

18
19 "Q Does the witness recall that there was a
20 special service unit in the Kwantung Army?

21 "A Yes.

22 "Q What type of work was this unit engaged in?

23 "A The object was to train the Manchukuoan
24 Army to maintain law and order in Manchukuo and, when
25 need arises, to fight for the defense of Manchukuo.

1 "Q Do you know that General MINAMI abolished
2 this special service unit?

3 "A Previously I thought you referred to the
4 military department. If it's the special service
5 department, I have another answer.

6 "Q I meant the special service department.
7 Then could you please explain where and what type
8 of work the special service department was engaged in?

9 "A. When I first went to the Kwantung Army, it
10 was immediately after the special service department
11 was abolished. At that time, within the Kwantung
12 Army, the regular officers were actively engaged in
13 participating in economic and political affairs.

14 "Q Then, is it not true: that the reason
15 General MINAMI abolished this special service depart-
16 ment was because regular army officers should not
17 indulge in politics?

18 "A Yes. Immediately after General MINAMI's
19 arrival to take over the post of Commander-in-Chief,
20 he immediately abolished this special service depart-
21 ment in order to remove the evils of the practice of
22 meddling in politics inasmuch as he felt that it
23 would lead to the corruption of the army itself"
24 (T. 2,117-2,118, see also Part II, Section 5, Para, 3,
25 Note (1), above; as to the allegation in NN-24, see

ditto, Note (3), above).

1 11. The prosecution's allegations in E-1
2 to 19 and NN-25 to 29 are met by our contention in
3 Part II, Section 6. Concerning the question of Inner
4 Mongolia, we beg to refer to the contention in our
5 motion to dismiss (T. 16,479). Even the prosecution
6 admits: "At the time, relations between China and
7 Japan were rather good. According to defense witness
8 KUROASHIMA, the North China situation had been generally
9 calm, and on May 17, 1935, it had been decided to
10 raise the Japanese legation in China to an Embassy"
11 (E-2). Then, why the prosecution is "prone to raise
12 a storm in a teacup" (E-2), by inferring a sinister
13 meaning from newspaper reports of the meeting at
14 Hsinking of HAYASHI, MINAMI and UMEZU on or about
15 June 1st, 1935? (E-6). It was, indeed, a "routine
16 business" for UMEZU to meet War Minister HAYASHI at
17 Hsinking on May 29th, when the latter came "to inspect
18 conditions in Manchuria" (NN-25). How could MINAMI
19 have prevented the coming of the one or the other?
20 We have heard many times the prosecution's assertion
21 that the guilt of the accused would be proved beyond
22 reasonable doubt, but we cannot accept the above-
23 mentioned inference of the prosecution as evidence
24 without doubt. As to the allegation in NN-29 vis-a-vis
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the U.S.S.R., we have already argued fully in
part III above.

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12. As to the allegation in NN-30, concern-
1 ing MINAMI's letter to UGAKI, we wish to refer the
2 Tribunal to PART II, Section 7, Paragraph 2, above.
3 As to that of NN-31, we beg to refer to PART I, Para-
4 graph 11, above. The prosecution maintains that MINAMI
5 received from Hitler a decoration only two or three
6 other Japanese had ever received, (NN-31) but where
7 is such an evidence that it was only two or three
8 Japanese who received the German decoration? The
9 prosecution has never produced even the citation for
10 such reward. (T. 20,017)

13. The allegation in NN-32 is fully re-
12 futed by our contention in PART IV above. We regret,
13 moreover, the disregard of the prosecution of any
14 language correction, such as evidenced in NN-32.
15 Exhibit 1973 never mentioned "the Governor-General,"
16 (T. 14,512) the designation to which the prosecution
17 seems to stick forever in conjunction with the P.O.W.
18 questions in Korea. As to the allegations in NN-33
19 and 34, we have argued in detail in PART I, Paragraph
20 12, and PART III, Paragraphs 6 and 7, above.

22 14. It is alleged in NN-3: "In viewing
23 the important assignments and appointments of MINAMI
24 from 1927 to 1945, it becomes apparent that between
25 those dates, he was in positions of great authority,

where policy making was required, and where action
1 had to be taken either to advance or halt acts of
2 military aggression." May we ask then whether there
3 is any evidence that he took an active part in such
4 acts of military aggression? Is there any proof that
5 "his dealing with KOISO, TATEKAWA, NINOMIYA and others"
6 conspired to secure domination for Japan in Manchuria,
7 China or elsewhere? (NN-35) Is there any evidence that
8 he approved the expanding movements in Manchuria, Mon-
9 golia and North China? (NN-35) Is there any evidence
10 that he waged wars of aggression against China while
11 he was War Minister and as Commander of the Kwantung
12 Army? (NN-35) Is there any evidence that he took
13 any part in having British and American P.O.W.s brought
14 to Korea for illegal purposes? (NN-35) Should he be
15 blamed for his acts done in the natural course of his
16 duty in every stage of his career? Indeed, he was
17 unfortunate in holding such offices as termed by the
18 prosecution "of crucial importance." (NN-3)

20 In view of the charges specifically made
21 against MIYAMA by the U.S.S.K. prosecutors, we wish
22 to add the following remarks:

23 15. The prosecution alleges: "MIYAMA's
24 proposal to the effect that the Sea of Japan should
25 be transformed into the Lake of Japan obviously

contemplated the incorporation into Japan of the
1 Soviet Maritime Province, the shores of which are
2 washed by the Sea of Japan." (H-31) This matter has
3 been already discussed in PART II, Section 4, Paragraph
4 18, Notes (1) - (3), above. The words of MINAMI at
5 the Imperial tea party of January 28th, 1932, "to
6 make the Sea of Japan into a lake," were merely a
7 figurative description to bring to that area the calm
8 and peaceful condition of a lake. To attribute thereto
9 any sinister meaning, such as a territorial ambition
10 vis-a-vis the Soviet Maritime Province, is too far
11 fetched to be taken seriously.

12
13 16. The prosecution also alleges: "During
14 his cross-examination, the defendant MINAMI admitted
15 that during the time he held the post of Commander-in-
16 Chief of the Kwantung Army intensive construction of
17 railroads was going on in Manchuria and that those
18 railroads were built in the direction of the Soviet
19 border." (H-44) What MINAMI admitted was that such
20 railroads aimed principally at the opening up of
21 Northern Manchuria. (T. 19,951) Supposing, however,
22 that they were being constructed for strategic pur-
23 poses, there is no reason why MINAMI should be blamed
24 for their construction. In view of the double-tracking
25 of the Siberian Railways and the fortification of the

1 Soviet provinces surrounding Manchukuo, (ITAGAKI,
2 Ex. 3316, T. 30,287) the latter had to take into con-
3 sideration the possibility of a Soviet attack, whose
4 strength in the Far East was four times as large as
5 that of the Kwantung Army in 1934-1935, (T. 30,287)
6 that is to say, the Soviet troops in the Far East
7 amounted to 230,000-240,000 men, (Ex. 2681, T. 23,550)
8 while the Kwantung Army had 60,000 men. (Ex. 2207,
9 T. 15,785) Manchukuo, as a sovereign country, had
10 the right to defend herself by necessary preparations
11 and the Kwantung Army was duty bound under the treaty
12 to assist her. If such a preparation were to be held
13 as a crime, there would be no security for any country
14 in the execution of its defense program.

15 17. It is alleged by the prosecution that
16 MINAMI confirmed that in case war should break out
17 between Japan and Russia, Manchuria would be necessary
18 as a military base against Russia. (h-52) The prose-
19 cution quotes the testimony of KAWABE, who stated:
20 "We planned only a basic plan in anticipation of en-
21 counters on the frontiers of South and North Manchuria
22 and we were thinking of making a defensive stand in
23 northern Korea," (T. 17,049) and then the prosecution
24 asserts: "It stands to reason that the planned clash
25 with the Soviet Army on the border with Northern

1 Manchuria could take place only in case a preliminary
2 occupation of the whole of Manchuria by the Japanese
3 troops." (H-52* It is beyond our comprehension how
4 the encounters on the frontiers of South and North Man-
5 churia, anticipated by KAWABE, could not take place
6 without a preliminary occupation of the whole of
7 Manchuria by the Japanese troops. Obviously KAWABE
8 presupposed the occupation of North Manchuria by the
9 Soviet troops, with whom the Kwantung Army (already
10 stationed in South Manchuria by treaty right) would
11 encounter on the border between North and South Man-
12 churia. It stands to reason, therefore, that in such
13 a case the flank of the Kwantung Army would be exposed
14 to the Soviet thrust from the Maritime Province which
15 borders northern Korea and that the making of a defen-
16 sive stand there would become most essential.

17
18 18. As Manchuria was a region, the integrity
19 of which constituted a special and vital interest for
20 Japan's safety, her freedom of action in defending that
21 region could not be prejudiced by any treaty, if we
22 follow the words of Mr. Chamberlain. (See PART I,
23 Paragraph 3) It was natural for Japan to have plans
24 for defense of that region. To borrow the words of the
25 prosecution in H-61, we submit that the prosecution is
"fundamentally wrong in discussing and criticising such

1 measures of defense." The prosecution attacks the
2 probative value of defense exhibit 2681, a table on
3 the approximate strength of the Soviet troops in the
4 Far East during the period of 1931-1943, (H-60) but
5 what about prosecution exhibits 717, (H-39) 712, (H-44)
6 716 (H-45) and other documents, which are prepared by
7 the Soviet Army General Staff? We have seen many a
8 case where two bordering countries indulged in blaming
9 each other for the increase of military strength.
10 Should we concede that a war of aggression may be
11 decided by the firing of the first shot, how can we de-
12 termine the aggressiveness of a defense plan of one
13 country any more than that of the other? It is respect-
14 fully submitted that international law has not only
15 never condemned such planning or preparation but recog-
16 nized its legitimacy as the exercise of the sovereign
17 right of an independent country. Is the manufacture
18 of atomic bombs a preparation for aggressive war or
19 defensive war? What difference is there between this
20 preparation and the construction of railways and mili-
21 tary bases in Manchuria, alleged by the prosecution?
22 In our submission, no earthly tribunal can adjudge
23 this kind of question.
24

25 19. As to the allegations in H-66 and 67,
concerning MINAMI's letter of October 6th, 1927,

1 (Ex. 2436, T. 19,943) we have already dealt with it
2 in PART I, Paragraph 1, Note (1), and PART III, Para-
3 graph 1, above. Not only the letter was written beyond
4 the time limit of the Indictment, but its purport was
5 for the purpose of gathering information which was and
6 is permissible under international law. As to the
7 allegation in H-198, that "from the beginning to the
8 end of MINAMI's military and political career he re-
9 mained an organizer of aggression against the peoples
10 of the Soviet Union and other peace-loving nations,"
11 we must reply that throughout his career MINAMI never
12 formulated or participated in any plan or organization
13 which aimed at Japan's territorial expansion towards
14 the Soviet Union or towards any other country. On the
15 contrary, his policy was always defensive and conserva-
16 tive, putting restraint on radical ideas and direct
17 actions of the younger generation to the best of his
18 ability. The fact that no trouble arose between the
19 U.S.S.R. and Japan during the time when he was the
20 Vice Chief of the General Staff, the War Minister and
21 the Commander of the Kwantung Army is the best evidence
22 to refute the prosecution's allegation. After his re-
23 tirement from the army in 1936, his positions were
24 obscure and relatively unimportant.

25 20. The revised statement of the prosecution

1 in NN-29 alleges: "During his stay in Manchuria
2 MIKAMI fostered the activities of the Kyo-Wa-Kai so-
3 ciety in the matter of preparing the population of the
4 country for a war with U.S.S.R. and continued person-
5 ally to guide the subversive activities directed against
6 the Soviet Union in using the Kharbin Special Service
7 Organ subordinated to him for this purpose." Where
8 is the evidence to support such an allegation? The
9 prosecution cites exhibit No. 731 (reference to
10 transcript should be T. 6,605 et seq, not T. 3,853),
11 but this exhibit mentions only that "General MIKAMI
12 and General NISHIO and a number of other representa-
13 tives of higher authorities issued special direct-
14 ives concerning the intrinsic nature of the Kyo-Wa-Kai,"
15 without showing the contents or even the dates of such
16 directives. (T. 7,608) The exhibit is a book, published
17 in Kharbin in 1942, that is to say, six years after
18 MIKAMI left Manchuria and his post of the Commander
19 of the Kwantung Army. The compiler of the book is
20 the so-called "Chief Russian Emigrants Bureau in the
21 Manchurian Empire" (T. 7,605) but there is no evidence
22 that the said Bureau "was used by the Kharbin Special
23 Service Organ for activities hostile to the Soviet
24 Union," as alleged by the prosecution in NN-29, nor
25 that MIKAMI had any connection with the said Bureau

1 or with its activities. Whether or not the book shows
2 a photograph of MINAMI as "Commanding General of the
3 Kwantung Army," (T. 7,615) is entirely immaterial and
4 irrelevant, because anybody could print his photographs
5 with a caption as to his title.

6 On the contrary, MINAMI testified as follows:
7 "I was bitterly opposed to the Concordia Society (i.e.
8 Kyo-Wa-Kai) and as soon as I assumed my post as Com-
9 mander of the Kwantung Army the Concordia Society,
10 which had grown by leaps and bounds up to then, sudden-
11 ly had to stop its activities. . . .The reason for my
12 opposition to the Concordia Society was that if such
13 an association was established while the country was
14 still very young and before local administrations had
15 been firmly established, various functions of the party
16 would conflict with government policies while some
17 might even be considered government spies. . . .That is
18 to say, this system would inaugurate a system of one
19 country and one party. Therefore, I was opposed to the
20 Concordia Association." (T. 19,968-9) Although he never
21 sent or made any representations to Manchukuo concern-
22 ing the Concordia Society, "it did not develop", be-
23 cause of his attitude, while he was the Commander of
24 the Kwantung Army. (T. 20,072)

25 Thank you.

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THE PRESIDENT: Mr. Yamaoka.

1 MR. YAMAOKA: May it please the Tribunal, I
2 now present the individual summation on behalf of
3 Koki HIROTA.

4 Mr. Koki HIROTA has been prosecuted on forty-
5 eight (48) counts of the fifty-five counts set forth
6 in the alleged Indictment.¹ It must now be crystal
7 clear to the Tribunal after nearly twenty (20) months
8 of testimony and the consideration of thousands of
9 documents that the prosecution has palpably failed to
10 sustain as against this accused any single one of those
11 counts. At the time the general opening statement on
12 behalf of the defense was presented Mr. HIROTA an-
13 nounced through counsel that he did not concur with
14 that statement and that he would rely upon his indi-
15 vidual opening statement to explain his special
16 position in this case.² The reason for that position
17 was that the general opening statement on behalf
18 of the defense dealt with many matters with which
19 Mr. HIROTA did not have the slightest connection;
20 in other words the general opening statement sought to
21 prove too much as far as Mr. HIROTA is concerned. The
22 accused is willing to accept full responsibility for
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1. Counts 1 to 17, 19 to 25, 27 to 35, 37 to 47, 52
to 55.
2. T. 17006.

1 events which occurred during the times he occupied
2 high office in so far as they relate to situations
3 which he had the power to direct or control.

4 Mr. HIROTA was born a commoner in Fukuoka,
5 Kyushu, on February 14, 1878; after completing the
6 regular course in the university, he entered upon a
7 diplomatic career in 1906 and remained in that service
8 for twenty-seven (27) consecutive years until 1932;
9 he never occupied an office in the army or navy. He
10 served in the diplomatic service in the United States,
11 England, China, Holland and the Soviet Union; he also
12 occupied important posts in the Foreign Ministry at
13 home. In 1932 he was relieved of his post as Ambassa-
14 dor to the Soviet Union and returned to private life.
15 On September 14, 1933, he was appointed as Foreign
16 Minister in the SAITO Cabinet; this appointment came
17 as a complete surprise; ^{3.} he continued as Foreign
18 Minister in the succeeding OKADA Cabinet which fell
19 as a result of the so-called "February 26" Incident.
20 He was summoned by His Majesty as Premier on March 9,
21 1936 in the dark and uncertain days that immediately
22 ensued and succeeded in forming a cabinet after a
23 lapse of a number of days. His cabinet fell on
24 February 1, 1937 as a result of his flat refusal to
25

3. Exhibit 3236 (T. 29447).

1 dissolve the Diet on the demand of War Minister
2 TERAUCHI who had been engaged in a heated discussion
3 with HAMADA, a prominent member of the Diet, over
4 matters which have possible relation to the indictment
5 in this case. On February 1, 1937, he returned again
6 to private life, without thought or ambition for further
7 public office or responsibility, and thoroughly dis-
8 mayed at the internal and political situation in
9 Japan which functioned under what was in essence two
10 (2) sovereign and autonomous governments; that is to
11 say, the civil government on the one hand and the
12 Supreme Command on the other. In June 1937, when
13 Prince KONOYE formed his First Cabinet just about a
14 month before the Marco Polo Bridge Incident, Mr.
15 HIROTA was ardently solicited by the Prime Minister
16 and Prince SAIONJI, the last Genro, to join that
17 cabinet as Foreign Minister. As has been pointed out
18 in the opening statement on behalf of this defendant,
19 Prince SAIONJI was of the opinion that Mr. HIROTA
20 would lend strength and balance to that cabinet. He
21 resigned that post on May 26, 1938, never again to
22 return to high office in Japan and without any ambi-
23 tion whatsoever in that respect.
24
25

During the time Mr. HIROTA held those offices
a number of vexatious events occurred which the

1 prosecution contends with startling imagination and
2 ingenuity have relevance to the sweeping allegations
3 contained in the alleged Indictment; they are, for
4 example, termination of the Washington Naval Treaty
5 in accordance with its provisions; the passage by the
6 cabinet of the ordinance limiting the posts of ministers
7 of war and navy to men in active service, which had
8 been the practice both before and after the ordinance;
9 the withdrawal from the London Naval Conference after
10 long and fruitless discussion; the conclusion of the
11 Anti-Comintern Pact; and finally the China Affair.
12 The great preponderance and, indeed, the overwhelming
13 weight of the evidence shows that none of those occur-
14 rences have any connection with a "common plan or
15 conspiracy" or were in any single instance by causes
16 or intentions which were aggressive in nature; and,
17 assuming arguendo that such a strained interpretation
18 could be placed on those events, viewed separately or
19 in the aggregate, there is not a jot of evidence in the
20 case to show that Mr. HIROTA, as an individual, was
21 motivated by any such intention or purpose as is
22 alleged in the Indictment.

23
24
25 A number of the counts in the Indictment
against Mr. HIROTA deal with matters which occurred
during the time he held no official position in the

1 Japanese Government. They are, for example, count 25,
2 which deals with skirmishes with the armed forces of
3 the Soviet Union at Lake Khasan in July and August
4 1938; count 46, which deals with an attack on Canton
5 about October 21, 1938; and count 47, which deals with
6 an attack on Hankow about October 27, 1938. As
7 Mr. HIROTA held no office at the time those events
8 occurred and there is no evidence that he had any
9 relationship to those events as a private individual,
10 it is obvious that he cannot be held responsible under
11 the foregoing counts. Mr. HIROTA is also named in a
12 number of counts which relate solely to matters which
13 occurred at the inception or during the continuance of
14 the Pacific War. Since the accused had been a private
15 citizen ever since May 1938 and the prosecution made
16 no effort to show that he had anything to do with a
17 "common plan or conspiracy," to initiate or wage such
18 a war or anything to do with events which transpired
19 during the continuance of that war, it is difficult
20 to understand why Mr. HIROTA was named in those counts
21 unless it be that the prosecution was simply throwing
22 out a dragnet.
23

24 Mr. HIROTA was a State Councillor from March
25 to August 1940 during the tenure of the YONAI Cabinet.
All the evidence in the case shows that such a position

1 was entirely of an advisory nature and carried no
2 authority or responsibility. What is more important,
3 the prosecution failed to offer a single line of evi-
4 dence to show that anything Mr. HIROTA said or did as
5 a State Councillor in the YONAI Cabinet had any relation
6 to the allegations in the Indictment. It will be made
7 clear later in the argument that the advice given by
8 Mr. HIROTA as State Councillor to Admiral YONAI had no
9 bearing whatever upon the Pacific War.

10 With respect to the position Mr. HIROTA took
11 as a so-called "senior statesman," it will be made
12 clear in the subsequent argument that he exerted his
13 best efforts to avert the Pacific War, as he had
14 uniformly exerted his efforts during the days he held
15 high office to avert war and promote the spirit of
16 peace, harmony and cooperation among all nations.

17 The remainder of the argument will be broken
18 down into appropriate sections for the ready reference
19 and understanding of the Tribunal.

20 SECTION 1

21 THE GENERAL POLICY, ATTITUDE AND VIEWS OF 22 MR. HIROTA THROUGH PUBLIC SERVICE.

23 1. A hundred different pieces of evidence
24 in the case show beyond all reasonable doubt that
25 Mr. HIROTA has been a man of peace all his life.

1 Having served at important diplomatic posts throughout
2 the world he acquired a vast experience with respect
3 to conditions within all the larger nations. He has
4 been awarded high decorations by the Governments of
5 France, Russia, China, Great Britain, Belgium, and has
6 been decorated by his own government on many occasions
7 for distinguished service. On November 22, 1926, he
8 was appointed Minister to the Netherlands where he
9 remained until October 15, 1930, at which time he was
10 appointed Ambassador to Moscow. The prosecution made
11 no effort to prove that Mr. HIROTA said or did any-
12 thing at his post in the Netherlands which has any
13 relation to the allegations in the Indictment. During
14 his tenure in Holland he proposed the idea of a
15 Treaty of Judicial Settlement, Arbitration and Media-
16 tion with Japan, which was signed but never ratified
17 by Japan until Mr. HIROTA became Foreign Minister and
18 personally pushed the ratification. On August 7, 1929,
19 he was appointed Japanese delegate to the conference
20 held at the Hague with respect to German reparations.
21 During Mr. HIROTA's service as Ambassador to Moscow
22 from October 15, 1930 until November 19, 1932, he was
23 engaged in solving piece by piece various outstanding
24 questions between the two governments; at that post
25 even the Russians liked and trusted him and the

1 prosecution has failed to produce a single piece of
2 evidence to show that during his Ambassadorship to
3 Moscow he said or did anything whatever which has any
4 relation to the allegations of the indictment.

5 2. At the time Mr. HIROTA became Foreign
6 Minister for the first time in September 1933 the
7 internal situation and international relations of Japan
8 were far from bright. Japan had already withdrawn
9 from the League of Nations. Mr. HIROTA had nothing
10 whatever to do with the decision to withdraw from the
11 League of Nations and when he first came to the Foreign
12 Ministry he was confronted with an accomplished fact
13 in that regard. Following the decision of the League
14 and the withdrawal of Japan, the leading nations of
15 the world, notably the United States and Great Britain,
16 adopted toward Japan what might be appropriately de-
17 scribed as a "cold shoulder" attitude. In September
18 1933 Japan was virtually isolated from the family of
19 nations although His Majesty had been careful to point
20 out in the Imperial Rescript that withdrawal from the
21 League in no sense implied that Japan would not cooperate
22 in a spirit of harmony and conciliation with all nations.
23 Confronted with this attitude on the part of the nations,
24 Mr. HIROTA set about, as best one man can, to improve
25 the relations of Japan with the entire world, especially

relations with the United States, Great Britain,

4.

1 USSR, and China.

2 On the domestic front Japan was just begin-
3 ning to recover from the disastrous economic depres-
4 sion of 1930. Japan being a country poverty stricken
5 in essential natural resources was compelled to promote
6 its foreign trade or go under as a modern nation. The
7 economic situation existing throughout the thirties
8 was precisely the same as the situation which the
9 Supreme Commander described recently, "Japan must
10 trade or starve." Faced with the constantly increas-
11 ing population, insufficient land for cultivation and
12 the "cold shoulder" attitude of the nations after
13 Japan's withdrawal from the League, it stimulated and
14 stirred up elements within the military, mostly junior
15 officers and ordinary enlisted men, and segments of the
16 population to chauvinistic attitudes and movements.

17
18 3. The cornerstone of Mr. HIROTA's foreign
19 policy from first to last was harmony, cooperation,
20 and peace with all nations; he boldly expressed this
21 policy in the Diet and on various occasions in the
22 newspapers of Japan; and for this reason his diplomacy
23 was popularly called "conciliatory diplomacy" by way
24

25 4. Exhibit 3866 (T. 38598), exhibit 3237 (T. 29452-61)
and exhibit 3869 (T. 38639).

of contrast with the so-called "burnt ground" diplomacy
of his predecessor, Count UCHIDA.^{5.}

4. Foreign Minister HIROTA made extraordinary
efforts to improve relations with the United States
and Great Britain from first to last (September
1933 - May 1938). United States Ambassador Grew
said under oath that as early as September 18, 1933,
the Foreign Minister told him that improvement of
Japanese-American relations was the cornerstone of
his foreign policy and that it had been the primary
reason for his acceptance of the appointment as
Foreign Minister which had come as a complete surprise.
Again, in his first address as Foreign Minister at the
Diet in January 1934, he emphasized in pleading terms
that both the government and people of Japan earnestly
desired to maintain neighborly friendship with the
United States and he expressed his high hope that the
United States might come to understand the complicated
and peculiar state of affairs in the Far East; he
referred also in like vein to the maintenance of the
long-standing friendly relations with Britain.^{7.}

5. Exhibit 3241, affidavit of KUWASHIMA, paragraph 2
(T. 29481-82).

6. Exhibit 3236 (T. 29447).

7. Exhibit 3237 (T. 29451).

5. In March 1934 he sent a personal message
1 to Secretary of State Hull saying "No question exists
2 between our two countries that is fundamentally
3 incapable of amicable solution," to which the Secre-
4 tary made a cordial reply. In his address at the
5 Diet in January 1935 and again in that of January 1936
6 he repeatedly emphasized the desire on the part of
7 the government for friendly relations with the United
8 States, Britain and all other countries. These
9 statements of peaceful intention were pious enough;
10 and the Tribunal speaking through its President conceded
11 that all of Mr. HIROTA's public statements were con-
12 ciliatory even to the point of being "pregnant" in that
13 respect. Those public statements, reinforced as they
14 are by many private statements, both in and out of
15 the Diet, leave no room for saying that Mr. HIROTA's
16 addresses and remarks were artifice or statements
17 intended to cover up treacherous designs on the part
18 of the Japanese Government. The prosecution is
19 unbelievably cruel when, speaking through one of its
20 prosecutors, Mr. HIROTA is described as being "clever"
21 and "smooth" in a malignant sense. The foregoing
22 statements of Mr. HIROTA in the Diet and on other
23
24

25 8. Exhibit 3239 (Tr. 29,468).

9. Exhibit 3247 (Tr. 29,591) and exhibit 2434
(Tr. 19,728).

1 occasions repeatedly expressing his desire for the
2 maintenance of friendly relations with the United States,
3 Britain, China and the Soviet Union were powerful
4 demonstrations for the maintenance of the peace of the
5 world, especially when it is realized that the statements
6 were made when public opinion in Japan was sharply
7 divided, chauvinistic movements were growing and the
8 press of Japan was inclined in sporadic instances to
9 play up news items along ultranationalistic lines.

10 6. The fact that Mr. HIROTA was a liberal
11 and real pacifist and actually worked very hard toward
12 the realization of harmonious relations with all coun-
13 tries has been and is recognized today by all the dip-
14 lomats and correspondents who came in touch with him.
15 For example, Ambassadors Grew and Craigie, who must
16 have felt uneasy from the standpoint of international
17 relations to witness certain kinds of activity in
18 Japan and actually lodged protests with the Foreign
19 Minister with respect to it, were well aware that
20 Mr. HIROTA was a pacifist and would use his best efforts
21 to control such situations; they also knew that
22 Mr. HIROTA was using foresight to prevent the occur-
23 rence of such situations; and the diary of Ambassador
24 Grew, the accounts by Ambassador Craigie and other
25 foreign diplomats which have been produced as evidence

demonstrate the foregoing statements fully. Even the
1 Soviet Ambassador Yurenev mentioned Mr. HIROTA and
2 Prince SAIONJI as liberals.¹⁰

3 7. When Mr. HIROTA was first appointed Foreign
4 Minister in September 1933, the fundamental policy
5 of Japan toward Manchuria had already been decided by
6 preceding cabinets and was actually being carried on.
7 He was confronted by a fait accompli which did not lay
8 in the power of anyone in Japan to easily move or
9 change.¹¹ The independence of Manchoukuo had been
10 recognized by the Japanese Government one year before,
11 and the basic treaty with that country had been concluded.
12 Before Mr. HIROTA assumed his first office as Foreign
13 Minister the Japanese Government had decided on
14 August 8, 1933, that it would recognize a form of
15 monarchy in Manchoukuo;¹² this is nothing more than a
16 mere acknowledgment of the previously established
17 policy although it was actually promulgated after the
18 appointment of Mr. HIROTA as Foreign Minister.¹³ In
19 these circumstances it was thoroughly impossible for
20 Mr. HIROTA, as well as any other single person in
21 Japan, to overrule the fundamental policy which had
22
23 10. Grew Diary, March 9, 1934, ex. 3240 (Tr. 29,473).
24 11. Tr. 1890-91.
25 12. Gist of policy toward Manchoukuo, ex. 233
(Tr. 2926).
13. Exhibits 234 - 437 (Tr. 2933, 5015).

1 been already decided after elaborate consideration by
2 the Japanese Government and the Diet. Under such con-
3 ditions Mr. HIROTA did all that was possible to ease
4 the friction with other countries arising out of the
5 Manchurian Incident, but his efforts were confronted
6 from the beginning by various obstacles. Here it
7 ought to be recalled that living within the borders of
8 Manchoukuo were two hundred thousand (200,000) Japanese
9 and eight hundred thousand (800,000) Koreans who were
10 living in the midst of twenty-seven million (27,000,000)
11 Chinese, Manchus, Mongolians and White Russians; and
12 that the Japanese Government and Japanese citizens had
13 long-standing legitimate investments in Manchoukuo of
14 vast proportions. The Lytton Report amply discloses
15 the chaotic conditions, banditry which was rampant,
16 etc., which jeopardized these valid Japanese interests
17 a parallel existing nowhere else in the world. The
18 competence of the Foreign Minister with regard to
19 the problems of Manchoukuo was largely restricted by
20 law and much more in practice. The post of Ambassador
21 to Manchoukuo was held additionally by the Commander
22 of the Kwantung Army. In essence all that the Foreign
23 Minister could direct were matters related to so-called
24 genuine diplomacy; that is to say, matters of protocol,
25 treaty procedure, and so forth. The real authority

1 from the standpoint of the Foreign Ministry was always
2 in the hands of the Kwantung Army which was utterly
3 beyond the control of the civil side of the government.¹⁴
4 The Bureau of Manchurian Affairs¹⁵ was created with a
5 view to improving such a state of affairs, but the
6 already-established status from a practical standpoint
7 was hardly ameliorated by that maneuver. The appoint-
8 ment of the Japanese-Manchoukuo Joint Economic Com-
9 mittee with an equal number of representatives on each
10 side was also set up in 1935 as an additional step for
11 the same purpose, the idea being to make Manchoukuo
12 fully sovereign and independent in fact as well as in
13 the eyes of third powers. He agreed to the formation
14 of the Joint Economic Committee in 1935 and surrender
15 by Japan of all extraterritorial rights in favor of
16 Manchoukuo in 1937, in order to neutralize the influence
17 of the Kwantung Army and to make Manchoukuo a sovereign
18 and independent nation in both form and substance.
19 There is no evidence in the case that the Foreign Minis-
20 ter had anything whatever to do with the installation
21 of Henry Pu-Yi as Regent. Likewise the Foreign Minister
22 had nothing whatever to do with the arrangements for
23 or subsequent coronation of the Regent. As Mr. HIROTA
24

25 14. Witness Former Premier OKADA, ex. 175 (Tr. 1813),
Witness TANAKA, Ryukichi (Tr. 1945).

15. Exhibit 451 (Tr. 5112).

was Ambassador to Moscow when the Mukden Incident occurred it should be noted that there is not a line of testimony in the case that he knew anything about any alleged Japanese Army plan in connection with the incident and that all the evidence in the case, including the testimony of Foreign Minister SHIDEHARA, shows that the Foreign Ministry and its staff had no connection whatever with the Mukden Incident or with any of the circumstances by reason of which Henry Pu-Yi became Regent. As the Foreign Ministry had no connection with the matter it is certain that Mr. HIROTA had no part in it.

8. While Mr. HIROTA was Foreign Minister several protests were lodged by third powers with respect to economic questions in Manchuria; the Government of the United States lodged several protests with the Japanese Government with respect to the so-called oil monopoly established by the Manchoukuo Government for the purpose of insuring a storage of six months' supply of oil at all times for the purpose of national defense. ¹⁶ These protests lodged with the Foreign Minister placed him in an embarrassing situation. The Japanese Government had already recognized Manchoukuo 16. Exhibits 939, 941 and 965 (Tr. 9406, 9413 and 9481).

1 as a solvent and independent nation; the United States
2 and other powers had withheld recognition; and in that
3 situation the United States and other powers aired all
4 their complaints about economic questions and the so-
5 called "Open Door" by using Japan as a sort of whipping
6 boy. Of course, the Japanese Government could not
7 accord full satisfaction to those complaints, assuming
8 arguendo they had any real merit or basis, without
9 fundamentally denying the sovereignty of Manchoukuo.
10 In other words, third powers by lodging their protests
11 with the Japanese Government were really calling upon
12 Japan to reduce Manchoukuo to a puppet in fact. As
13 the Foreign Minister had been striving constantly from
14 1933 through February 1, 1937 to take the last vestige
15 of Japanese fingers out of the internal economy and
16 Government of Manchoukuo, the Tribunal will readily
17 perceive a great dilemma and even paradox. Moreover,
18 an examination of the protests lodged by the United
19 States with respect to violation of the so-called
20 "Open Door" in Manchuria reveals that they were essen-
21 tially devoid of any merit; the decision of the Man-
22 choukuo Government to establish control over oil for
23 purposes of insuring an adequate supply of oil for
24 national defense in no sense involved a denial of "equal
25 opportunity." There is abundant evidence in the case

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22 choukuo Government to establish control over oil for
23 purposes of insuring an adequate supply of oil for
24 national defense in no sense involved a denial of "equal
25 opportunity." There is abundant evidence in the case

1 that the so-called oil monopoly was not a monopoly at
2 all. Moreover, Mr. HIROTA told Ambassador Grew that
3 the French had sent commercial representatives to
4 Manchoukuo and it would be well if the United States
5 did likewise; but as the United States and other
6 powers maintained a stand-off and non-recognition
7 attitude toward Manchoukuo and the evidence reveals
8 that none of the powers were really interested in exploit-
9 ing commercial opportunities in Manchoukuo, the whole
10 issue of those protests could be relegated to the aca-
11 demic and technical category. It should be borne in
12 mind that in the face of these protests, whether they
13 be regarded as substantial or otherwise, Mr. HIROTA
14 repeatedly assured the powers that Japan respected the
15 Nine-Power Pact, the principle of the "Open Door,"
16 and would not place any obstacles in the path of the
17 full realization of the aim and purpose of that pact.
18 The argument has dealt with concrete instances of the
19 difficulties arising between Japan and the United States
20 over the respective points of view with regard to Man-
21 choukuo because those protests threatened to disturb
22 the Foreign Minister's program for the over-all better-
23 ment of diplomatic relations with all countries.
24 Mr. HIROTA went to great pains to have the powers,

1 especially the United States, fully understand the
2 complicated state of affairs in East Asia and requested
3 the assistance of foreign diplomatic representatives
4 to avoid any aggravation of national sentiments arising
5 from a fundamental misunderstanding; ¹⁸ at the same time
6 he endeavored as far as possible to remove the causes
7 of friction and misunderstanding.

8 9. Reference will be made in another section
9 to the Foreign Minister's efforts in basically adjust-
10 ing relations with China which had been on the verge
11 of rupture both before and after the Mukden Incident
12 and also to his efforts to solve some of the compli-
13 cated questions which threatened to affect good rela-
14 tions with the Soviet Union. ¹⁹

15 Witness again that in 1935 Mr. HIROTA dis-
16 patched Ambassador DEBUCHI to Australia and New Zealand
17 to return courtesies by reason of the visit to Japan
18 of Australian Foreign Minister Latham for the purpose
19 of strengthening friendly ties. ²⁰ As a result, direct
20 diplomatic relations were for the first time established
21

22 18. Ex. 3237 (Tr. 29,451).

23 19. Exs. 3247 and 3248 (Tr. 29,591, 29,601).

24 20. In reporting these facts to the Diet in January
25 1936, HIROTA said, "As for the South Seas Islands, our
Empire looks forward to promoting amicable relations
expecting the development of our commercial intercourse
with them. From this point of view we heartily aspire
to a satisfactory development of the Philippine Common-
wealth which has lately been founded." Ex. 2434

(Tr. 29,641).

between Australia, Canada and Japan.

1
2 10. The discussion thus far has dealt with
3 the outline of the foreign policy pursued by Foreign
4 Minister HIROTA in the SAITO and OKADA cabinets. The
5 question of naval disarmament will be dealt with in
6 another section. All these manifold efforts on the
7 part of Mr. HIROTA between September 1933 and March 1,
8 1936 bore fruit in the form of general improvement of
9 Japan's international relations and Japan was gradually
10 recovering from its isolated position. The foreign trade
11 of Japan was also showing rapid improvement.

12 11. While the diplomacy of Mr. HIROTA was
13 making progress, a handful of extremists in the army,
14 consisting of a few officers below the rank of major
15 and enlisted personnel staged the wholly unexpected
16 "February 26" Incident. Of course, all the evidence
17 in the case shows that the civil government had nothing
18 to do with the origin or execution of the incident and
19 drastic punishment was meted out to the offenders after
20 trial by court-martial. The War Ministry, shocked at
21 the lack of discipline within the army, immediately
22 set about to restore discipline. The effort to assass-
23 inate Premier OKADA and the general excitement caused
24 the downfall of the OKADA Cabinet. Mr. HIROTA
25 ~~received the Imperial mandate to form a new ministry~~

1 in March 1936 and the new ministry was charged with
2 the responsibility for the purification of military
3 circles and the establishment of a peaceful foreign
4 policy.²¹ Of course, it is sheer nonsense to contend
5 that Mr. HIROTA was appointed Premier in order to per-
6 mit the Supreme Command to gain the upper hand or to
7 perpetuate any of the notions entertained by the
8 faction in the army which staged the "February 26"
9 Incident. Mr. HIROTA appointed Mr. ARITA as Foreign
10 Minister, and ARITA promptly announced that he would
11 follow the foreign policy of HIROTA, his predecessor
12 in office.²²

13 THE PRESIDENT: We will recess now until half-
14 past one.

15 (Whereupon, at 1200, a recess was
16 taken.)

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25 21. Exhibit 2366 (Tr. 18,176).
22. Exhibit 2507 (Tr. 20,967).

AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Yameoka.

MR. YAM/OKA: Continuing on page 24, paragraph

12:

The prosecution has contended that some of the policies of the HIROTA Cabinet were of aggressive nature. The discussion in succeeding sections will demonstrate that such an allegation is utterly groundless. After all, throughout Mr. HIROTA's entire tenure as Foreign Minister in the SAITO and OKADA Cabinets and as Premier (September 1933-February 1, 1937) Japan was consistently pursuing a peaceful policy vis-a-vis all nations. The important fact to note is that Japan was at peace during that entire period. While the effort of Mr. HIROTA basically to improve Sino-Japanese relations was not fully realized, it was not for lack of trying. The Anti-Comintern Pact which was concluded in 1936 had no tendency toward aggression and this matter will be dealt with in detail in a later section.

13. When a heated public argument took

1 place between the military and the Diet at the last
2 stage of the HIROTA Cabinet, the Premier did not
3 compromise with the military at the expense of the
4 Diet; consequently he allowed his Cabinet to collapse
5 in order to maintain principle. The First KONOYE
6 Cabinet was formed in June 1937 and Mr. HIROTA under
7 the circumstances previously stated again assumed
8 the office of Foreign Minister. It was about a month
9 after he assumed that office that the China Affair
10 began. This was the most tragic event for the Foreign
11 Minister and reduced to naught all his efforts throughout
12 the years to realize his long-cherished peaceful
13 policy in Sino-Japanese relations. Detailed accounts
14 will be given in a later section with respect to the
15 policy and actions which Mr. HIROTA took as Foreign
16 Minister in the First KONOYE Cabinet in an effort to
17 solve the China Affair. Even in the face of this
18 bloody ordeal he never gave up his constant endeavor
19 for peace. His zeal for peace remained unabated
20 even after he resigned his last office as Foreign
21 Minister in May 1938. He was indeed the last man,
22 even as a private citizen, to oppose the conclusion
23 of the Tri-Partite Pact.
24

25 In short, Mr. HIROTA is a man of pacific
thought and action, a champion for conciliatory

1 diplomacy, and throughout his public service he devoted
2 all his amazing energy and talents to the realization
3 of that kind of diplomacy. The following sections
4 will deal with the minutiae of the evidence in more
5 concrete form.

6 SECTION 2

7 THE SOVIET POLICY OF MR. HIROTA

8 14. By reason of his service as Ambassador
9 to Moscow and other diplomatic experience in dealing
10 with Soviet problems, Mr. HIROTA emerged as one of
11 the few Japanese diplomats and statesmen who "knew
12 Russia". While he was in Moscow the Soviet Union
13 was just completing the first of its gigantic "Five
14 Year Plans" to formidably strengthen the economy and
15 power of that nation. The Japanese as well as other
16 nations in the world began to wonder whether that
17 increase of power was intended for peaceful purposes
18 or offense. When it became clear during the successive
19 "Five Year Plans" that the bulk of Soviet energy was
20 going into armaments and fortifications and that the
21 major emphasis was directed toward Eastern Siberia
22 and Vladivostok, the Japanese entertained a real
23 suspicion and fear about the real motives of the
24 Soviet Union. Mr. HIROTA knew better than perhaps
25 any other Japanese the potential power and predilections

1 of that nation. He believed that the maintenance of
2 friendly relations with the Soviet Union was of
3 paramount importance even from the standpoint of
4 Japanese security alone. His friendly and peaceful
5 policy toward the northern neighbor constituted a
6 major part of his whole program for world peace which
7 he pursued from start to finish during his entire
8 public service. The fact that Mr. HIROTA, as Japanese
9 Ambassador to Moscow, endeavored to promote mutual
10 understanding between Japan and the Soviet Union is
11 especially mentioned in the statement of the People's
12 Commissar for Foreign Affairs, Maxim Litvinov²³.

13 15. The prosecution has failed to produce a
14 single line of evidence which even hints that Mr.
15 HIROTA at any time during his long public service
16 said or did anything which has any possible relation
17 to the Counts in the Indictment dealing with the
18 Soviet Union. They did produce a part of the corres-
19 pondence of KASAHARA, Military Atteche, written about
20 1931, in an apparent attempt to show that Mr. HIROTA
21 entertained some aggressive ideas toward the Soviet
22 Union²⁴; but that correspondence shows nothing of the
23 kind. That correspondence was not written or authorized
24 by HIROTA: it is a fragmentary document, partly illegible
25

23. Ex. 3252 (T. 29,616).

24. Ex. 692 (T. 7,447), Ex. 693 (T. 7,447).

written some time after the alleged remarks were made.

1 The KASHIARA correspondence was of course wholly
2 unknown to Mr. HIROTA who heard of it for the first
3 time during the course of these proceedings. Moreover,
4 KASHIARA has testified that the foregoing correspondence
5 might contain his own interpretation of what Mr.
6 HIROTA meant; he testified "I should think that some
7 of my private views also entered into this document...
8 I cannot say positively whether I had expressed the
9 Ambassador's thoughts truthfully and fully", and
10 further that the purport of the correspondence was
11 different from the opinion about Soviet relations
12 which Mr. HIROTA usually expressed²⁵. Therefore, it
13 is clear that Mr. HIROTA has no responsibility for
14 what KASHIARA wrote to military authorities in Tokyo
15 and that the whole matter is so dubious and unreliable
16 that it does not even amount to a straw in the wind
17 for the prosecution. Moreover, it is abundantly
18 demonstrated by all the evidence in the case that the
19 attitude and actions which HIROTA took or intended
20 to take toward the Soviet Union were uniformly in
21 the direction of friendship, understanding and certainly
22 peace at almost any dignified price.

23
24
25 16. When Ambassador YOSHIZAWA stopped at
25. T. 7,464 et seq.; T. 23,262 et seq.

Moscow during December 1931 on his way home, Litvinov
1 suggested the idea of a non-aggression pact with Japan²⁶;
2 HIROTA, who was present during the conversation, was
3 personally in favor of making such an agreement; he
4 candidly expressed his opinion to that effect at a
5 press interview immediately upon his return to Japan
6 after having been relieved as Ambassador to the
7 Soviet Union²⁷. The Japanese Government replied to
8 the Soviet proposal during the time Mr. HIROTA was
9 in retirement; the Japanese reply did not reject
10 outright the idea of a non-aggression pact but pointed
11 out that the two Governments ought to apply themselves
12 for the time being to the settlement of outstanding
13 questions and thereby improve public opinion for
14 the reception of such an agreement. Furthermore, the
15 Tribunal will find it significant that at no time while
16 Mr. HIROTA occupied the Foreign Ministership or
17 Premiership did the Soviet Union renew a proposal for
18 a non-aggression pact.
19

20 Of course, Mr. HIROTA has no responsibility
21 for the views entertained by Foreign Minister UCHIDA
22 with respect to the Soviet proposal. Lastly, it is
23 difficult to imagine what place this sort of evidence
24

25 26. Ex. 744 (T. 7,714).

27. Ex. 3232 (T. 29,380).

has with respect to the issues involved in this case.

1 Certainly the failure for one reason or another to
2 negotiate a treaty could not possibly be the basis
3 for a violation of international law and it has been
4 demonstrated time and again that so-called non-aggression
5 pacts are virtually useless in insuring the maintenance
6 of peace. The agreements between the Baltic States
7 and Germany and the Soviet Union are glaring examples
8 of recent date.

9
10 17. When Mr. HIROTA was first appointed
11 Foreign Minister in September 1933 he immediately
12 sought the solution of all outstanding questions with
13 the Soviet Union by diplomacy; among other things
14 he said "Proper adjustment of the tri-partite relation-
15 ship between Japan, Manchoukuo and the Soviet Union
16 was of paramount importance for the tranquility of
17 East Asia"; and this principle was also announced
18 in the Foreign Minister's speech before the Diet in
19 January 1934²⁸. The whole evidence in the case shows
20 that HIROTA during all his occupancy of high office
21 extended himself to meet as far as possible the Soviet
22 point of view with respect to all questions between
23 the two countries and that he was entirely successful
24 in that endeavor.

25 28. Ex. 3237 (T. 29,451).

18. The Soviet section of the prosecution
1 has injected the sale of the Chinese Eastern Railway
2 into this case. The Tribunal excluded much of the
3 evidence offered by the defense with respect to the
4 circumstances attending the negotiations and actual
5 sale of the Railway to Manchukuo. At the time this
6 evidence was cut short the President of the Tribunal
7 remarked in substance that the Tribunal would need
8 an allegation in the Indictment with respect to this
9 matter in order to deal with it; as there is no
10 allegation anywhere in the Indictment about this
11 transaction, there is nothing before the Tribunal to
12 decide. However, not being apprised as to what position
13 the Tribunal will ultimately take, the circumstances
14 attending the negotiations and sale of the Railway
15 will be discussed. In the first place the Chinese
16 Eastern Railway is linked to the South Manchurian
17 Railway; these two systems linked with the Trans-
18 Siberian Railway and formed the sole land connection
19 by rail between the East and Europe. It is a matter
20 of history that the Chinese Eastern Railway was built
21 during Czarist days and as frankly stated by the
22 Soviet delegate at the negotiations for the sale, it
23 had been used by Czarist Russia as an instrument of
24 Imperialism; it is also a matter of history that from

1 the time it was first built up until its sale in
2 1935 it had been continuously the source of friction
3 first between China and Russia, between China and
4 the Soviet Union, and still later between the Soviet
5 Union and Manchukuo. There is not a particle of
6 evidence in the case to show that the Japanese Govern-
7 ment ever had anything to do with the frequent
8 assaults and disputes which took place in connection
9 with the operation and finances of the Chinese
10 Eastern Railway. It was also clear as day in 1933
11 that there could never be any real peace, stability
12 or tranquility in East Asia while those disputes
13 continued or even posed a potential source of friction.
14 Now we will examine the fantastic assertion of the
15 Russian section of the prosecution that it was "forced"
16 to sell the Chinese Eastern Railway to Manchukuo.
17 Laying aside the fact that it would be difficult to
18 find any man of ordinary common sense who was credulous
19 enough to believe that the Soviet Union was moved by
20 force or coercion to sell, the uncontradicted evidence
21 in the case shows that the proposal for the sale
22 originated with the Soviet side in May 1933, when
23 Foreign Commissar Maxim Litvinov approached the
24 Japanese Ambassador Tamekichi OHTA, the successor
25 of Ambassador HIROTA in Moscow, with the proposition

for the sale of the Railway to either Manchukuo or
1 Japan. Here it must be remembered that the Chinese
2 Eastern Railway had been losing money in its operations
3 for a number of years and for that reason the Soviet
4 side had a powerful economic incentive to dispose
5 of the Railway aside from its professed purpose to
6 contribute to the peace of the Far East²⁹. The Japanese
7 Government decided it would not buy the Railway; when
8 Manchukuo indicated it would buy the Railway, Japan
9 offered its good offices by way of mediation alone to
10 facilitate the negotiations. The Soviet Union sent
11 a large delegation to Tokyo in June 1933 in connection
12 with the sale. At that time Mr. HIROTA was in retire-
13 ment and did not become Foreign Minister for the first
14 time until September 14, 1933. At the opening session
15 between the Soviet and Manchoukuoan delegates, the
16 Soviet side submitted an elaborate proposal dealing
17 with terms, conditions and price³⁰; the negotiations
18 dragged on for nearly a year without realizing any
19 appreciable progress and the negotiations actually
20 broke down because of a deadlock over the purchase
21 price and allowances to be made to Soviet employees.
22 Foreign Minister HIROTA entered the negotiations as
23
24 29. T. 36,129.
25 30. Ex. 3235 (T. 29,435), Ex. 3651 (T. 35,966).

1 a mediator with the express consent of the Soviet
2 and Manchoukuo delegations and his sole interest in
3 acting as mediator was to try to reconcile the widely
4 differing points of view with respect to the actual
5 value of the Railway. There is not a scintilla of
6 evidence in the case that while acting as mediator
7 he ever used duress or even uttered a harsh word
8 about the Soviet contentions. All this time the
9 Soviet side was exhibiting great eagerness to
10 conclude the sale. After many discussions, largely
11 devoted to mere haggling over price, an agreement
12 was reached late in 1934; in March 1935 the formal
13 agreement for the transfer of the Railway to Manchukuo
14 was concluded; and this came after nearly two years
15 of negotiations³¹. The mere fact that the final price
16 was lower than the Soviet offering price does not
17 prove that they were compelled to sell the Railway at
18 an unduly low price. Exhibit 3651 contains nothing
19 in support of such a ridiculous contention. Although
20 Japan did not purchase the Railway, the Soviet side
21 was suspicious about the solvency of Manchukuo and
22 demanded a guarantee of the purchase price from Japan
23 which was given as Japan's contribution to the stability
24 and peace of the Far East. Needless to say, Manchukuo
25

~~31. Affidavit of KAMEYAMA, Ex. 3234 (T. 29,426).~~

1 paid the full purchase price and the guarantee cost
2 Japan nothing. Consider also that at the first formal
3 conference held on June 26, 1933 the chief Russian
4 delegate expressed thanks to the Japanese Government
5 for serving as a mediator and that he desired the
6 negotiation to come to a successful conclusion
7 through the "positive and kind assistance" of the
8 Japanese Government; he also told the Japanese that
9 he entered the negotiation for the transfer of the
10 Railway "having due regard for the fact that recently
11 the said Railway might possibly become and actually
12 has become the source of dispute among the U.S.S.R.,
13 Japan and Manchukuo"³². The point expressed by the
14 Russian delegate heretofore quoted was mentioned by
15 Mr. HIROTA in a speech before the Diet in January 1935,
16 when he said, "If the transfer serves to eliminate
17 the source of such disputes as have occurred hitherto
18 so frequently along that Railway and to strengthen
19 the friendship between Japan, Manchukuo and the Soviet
20 Union, the prime objective of the present negotiations
21 will have been attained."³³ Abundant evidence that
22 the Soviet Union was entirely satisfied with the result
23 of their bargain is demonstrated by the telegram Foreign
24

25 32. Ex. 3235, T. 29,435.

33. Ex. 3247, T. 29,591.

1 Commissar Maxim Litvinov sent to Mr. HIROTA immediately
2 upon the conclusion of the sale; that telegram was
3 unprecedentedly warm and congratulatory and Mr.
4 HIROTA replied in the same sentiment and vein ³⁴ .
5 Further evidence of Soviet satisfaction appears in the
6 Litvinov statement to the Japanese press in Moscow where
7 he said that the Japanese and Manchukuo sides had come
8 to "meet" the Soviet concessions; and on that occasion
9 he praised highly Mr. HIROTA for his superb efforts as
10 a mediator. Consequently, it must appear to the
11 Tribunal beyond a peradventure of doubt that the
12 insistence of the Soviet section of the prosecution in
13 rehashing all the details and circumstances connected
14 with the sale was a sheer waste of time. What they
15 proved and the defense added to their picture in order
16 to complete the story demonstrates that the Soviet
17 contention is utterly groundless. On the other hand
18 this evidence backfired and really proved that Mr. HIROTA
19 and the Japanese Government of his days were promoting
20 the peace of the Far East and at the same time thought
21 that they were bettering relations with the Soviet Union.
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24
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1 19. During the entire time Mr. HIROTA
2 occupied high office there were no major border clashes
3 along the Soviet Manchukuo borders. The Lake Khasan
4 Incident broke out fully two months after Mr. HIROTA
5 had resigned from his last post as Foreign Minister in
6 the First KONOYE Cabinet. It is evident that he had
7 nothing to do with the Incident.³⁵ Mr. HIROTA, how-
8 ever, was not unmindful of the danger inherent in
9 potential border strife throughout the entire period of
10 his occupancy of high office. "The foreign policy of
11 the Japanese Empire,"³⁶ which was decided during
12 August, 1936, while Mr. HIROTA was Premier, sought the
13 pacific settlement of pending questions with the U.S.S.R.
14 the creation of border commissions, and the establish-
15 ment of demilitarized zones in order to take all pre-
16 cautions against friction with the Soviet Union. The
17 same document also made reference to the hope of con-
18 cluding a non-aggression pact. Foreign Minister ARITA
19 also reported to the Diet in January, 1937, that he had
20 made a proposal for border delimitations to the Soviet
21 Union.³⁷ HIROTA reported to the Diet on July 27, 1937,
22 that he had requested the Soviet Union to co-operate for
23 the prevention of border disturbances.³⁸ Thus it is
24

(35. Affidavit of General UGLKI, Ex. 2715, T. 23,868.

36. Ex. 704, T. 7,523, 8,178.

37. Ex. 2370, T. 18,387.

38. Ex. 2497, T. 20,816.)

1 shown by uncontradicted evidence that Mr. HIROTA exerted
2 every effort throughout his entire tenure of offices to
3 promote the tranquility of northern borders and that he
4 sought the pacific settlement of all outstanding questions

5 20. HIROTA, like many other statesmen through-
6 out the world, was opposed to Communism for the simple
7 reason that it threatened the Japanese system and form
8 of government. In November, 1936, at a time when many
9 governments in the world had been passing all sort of
10 measures for the control of Communism and the expulsion
11 of Communists, he approved the conclusion of the Anti-
12 Comintern Pact which will be dealt with more fully
13 later. It was aimed solely at checking the spread of
14 an ideology. HIROTA also wished that China would fall
15 in line with the Anti-Comintern policy; and even today
16 when the Nationalist Government of China is fighting a
17 life and death struggle with the Red movement with its
18 back literally against the wall, it is not difficult to
19 imagine that some quarters in the Nationalist Government
20 wish they had grasped HIROTA's open hand extended from
21 1934, and on, to co-operate in checking the spread of
22 Communism. This idea for Chinese co-operation to pre-
23 vent the spread of Communism constituted a part of
24 HIROTA's so-called "Three Principles" which Japan pro-
25 posed to the Chinese Government. It was also offered

again in the "political conditions" for the solution of
1 the China Incident, but these political conditions were
2 proposals for a permanent rapprochement between Japan
3 and China and had nothing to do with the standing offer
4 of the Japanese Government for a truce and cessation of
5 hostilities up to the time at least when Japan withdrew
6 recognition from the Chiang Kai-shek regime. Nothing in
7 connection with the Anti-Comintern Pact and the agree-
8 ment attached to it, or the proposal to the Chinese
9 Government to co-operate with respect to the suppression
10 of Communism, suggests the idea of a Japanese attack
11 upon the Soviet Union. Japan was well within its rights
12 in adopting an anti-Communism policy. Furthermore, the
13 Anti-Comintern Pact was not a "first step" looking for-
14 ward to a military alliance with Germany or Italy and
15 HIROTA had absolutely nothing whatever to do with the
16 negotiations three or more years later for the "strengthen-
17 ing" of the Anti-Comintern Pact and the later Tri-
18 partite Pact of 1940. Therefore there has been a total
19 failure on the part of the prosecution to offer a
20 scintilla of evidence in support of Counts 17, 25, 35
21 and 52.
22

23 SECTION 3.

24 HIROTA'S POLICY TOWARD CHINA

25 21. At the time HIROTA succeeded Count UCHIDA

1 as Foreign Minister on September 14, 1933, the relations
2 between Japan and China were anything but bright and
3 could be considered gloomy, oppressive and fraught with
4 all sort of danger; and Sino-Japanese diplomatic re-
5 lations were literally half severed. The attention of
6 the Tribunal is respectfully invited to the Lytton
7 Report which reveals in detail the backdrop of the actual
8 chaotic conditions in China. He was faced with a
9 Herculean task in his announced intention to effect a
10 radical and thorough-going improvement in Sino-Japanese
11 relations and he entered upon that great task with the
12 idea of appeasing the Chinese as far as circumstances
13 would permit and giving ground to the limit. Mr.
14 HIROTA in September, 1933, was thoroughly convinced
15 that relations between Japan and China could not continue
16 in the uncertain status which had prevailed for such a
17 long time. His resolution to effect a radical rapproche-
18 ment was repeatedly expressed in his addresses to the
19 Diet³⁹ and immediately upon assuming office he issued
20 repeated instructions to Ambassador ARIYOSHI at Nanking
21 to negotiate with the Chinese for the betterment of
22 Sino-Japanese relations in conformity with his principles
23 expressed to the Diet and elsewhere.
24

25 22. During normal times a large part of the
(39. Ex. 3237, T. 29,451; Ex. 3238, T. 29,462.)

1 foreign trade of Japan consisted of exports to China;
2 whole districts in Japan, such as sections of the Osaka
3 District, were geared to the production of goods to suit
4 the Chinese taste and pocketbook. Following the Man-
5 churian Incident trade between China and Japan reached
6 a record low and that condition persisted until the days
7 HIROTA became Foreign Minister in September, 1933. Be-
8 cause of the conciliatory policy of Mr. HIROTA, made
9 known to the Chinese through the Ambassador and other
10 channels, the attitude of the Nationalist Government of
11 China toward Japan began to take a favorable turn from
12 about the beginning of 1934 and a number of pending
13 questions were settled.⁴⁰ For example, such questions
14 as restriction of postal communication between Manchukuo
15 and China, which so vitally affected commerce and the
16 well-being of the people in both countries, was settled.
17 The series of conversations held in 1934 between Amba-
18 sador ARIYOSHI and Mr. Wang Ching-wei, President of the
19 Executive Yuan and Foreign Minister of the Nationalist
20 Government, who was then the righthand man of Chiang Kai-
21 shek and a long-time disciple of Dr. Sun Yat-Sen, the
22 father of the Chinese Republic, succeeded in paving the
23 way for a radical improvement of Sino-Japanese relations.⁴¹
24 The HIROTA "Three Principles" which later became the
25

(40. Ex. 3241, par. 4, T. 29481, 29484.

41. Ex. 3243, T. 29569.)

1 foundation of the Japanese foreign policy toward China
2 originated in the understanding reached during those
3 conversations; consequently the "Three Principles" are
4 not a one-sided Japanese invention but represented the
5 opinions of both sides after discussion and consideration.
6 During the conversations between ARIYOSHI and Wang an
7 agreement had been reached that certain principles should
8 guide the relations between Japan and China, that the
9 relations between the two countries should be adjusted
10 on the permanent foundation of co-existence and co-pros-
11 perity and that the questions arising out of Manchukuo
12 problems which were, so to speak, "like a reef in the
13 sea between the two countries," should be left untouched
14 for the time being. Thus, those conversations went a
15 long way at the time in promoting better relations.

16 . 23. It must be remembered, however, that at
17 the time the conversations between ARIYOSHI and Wang
18 were making progress there existed in Japan certain
19 elements in the military who were opposed to any policy
20 of Sino-Japanese rapprochement; and they frowned upon
21 any co-operative attitude toward China on the ground that
22 the Nationalist Government of China was anti-Japanese.
23 Mr. HIROTA exerted his utmost effort to rectify such
24 misunderstanding at home. His address to the Diet on
25 January 22, 1935, as well as his other statements before

1 committees of the Diet, demonstrate his attitude and
2 endeavors beyond all reasonable doubt.^{42.} In one of
3 those statements he said he did not have the slightest
4 suspicion with respect to the attitude of Chiang Kai-
5 shek; in another that Japan would not claim in China
6 any privilege which was not granted to third powers;
7 and elsewhere it appears that Mr. HIROTA was deeply
8 sympathetic with the long efforts of Chiang Kai-shek to
9 unify all of China. Chiang Kai-shek and Wang took
10 notice of Mr. HIROTA's statements and efforts and ex-
11 pressed their intention to co-operate in the views out-
12 lined by HIROTA. At that time the Chinese also showed
13 their good faith by taking measures to control the
14 anti-Japanese movement which almost immediately reflected
15 itself in improved trade between the two countries. The
16 legations in both countries were raised to the status of
17 embassies in May, 1935, at the initiative of HIROTA.⁴³

19 24. In view of the internal circumstances and
20 structure of the Japanese Government, the policy formu-
21 lated by the civil side of the Japanese Government toward
22 China could not be carried into execution without regard
23 to the views entertained by the Supreme Command which,
24 as has been so often stated during the course of this

25 (42. Ex. 3247, T. 29591; Ex. 3249, T. 29608;
Ex. 3250, T. 29611.

43. Ex. 3241, par. 7, T. 29481-87.)

1 trial, was autonomous. Granting that it could have been
2 decided without consulting the Army, it would have been
3 quite impossible to carry it into practice. Therefore,
4 HIROTA had his staff negotiate with the Army in order to
5 work out a workable and practical policy toward China
6 which would meet the military point of view to the extent
7 it did not destroy the principles which had been discussed
8 between the Foreign Ministry and the Chinese. Thus, in
9 July, 1935, a tentative plan ⁴⁴ was drawn and officially
10 submitted to the conference of the Foreign, War, and
11 Navy Ministries on October 4, 1935. Some modifications
12 were brought in at the suggestion of the military and
13 the plan was adopted as an understanding among the
14 stated three Ministries; and the plan obtained the
15 approval of the Premier and the Finance Minister. This
16 is the so-called HIROTA "Three Principles." The wording
17 of the final text ⁴⁵ is somewhat stronger in effect than
18 that of the Foreign Office plan, ⁴⁶ but the basic
19 principles of the Foreign Office plan were preserved in
20 the final draft. It is important to emphasize here that
21 Generalissimo Chiang of the Chinese Nationalist Govern-
22 ment, in a public statement, expressed his unconditional
23 agreement to the "Three Principles" and declared his
24

25 (44. Ex. 3253, T. 29621.

45. Ex. 3254, T. 29625.

46. Ex. 3253, T. 29621.)

1 desire to have them executed promptly.⁴⁷ In order to
2 cement this progress in the right direction, HIROTA
3 outlined the principles in a formal address to the Diet
4 in January, 1936.⁴⁸ As stated above, the so-called
5 HIROTA "Three Principles," which became the foundation
6 of HIROTA's policy toward China, were formulated with
7 the full understanding and consideration of the view-
8 point of the Chinese; the Chinese Government expressed
9 its complete agreement with the principles; and they
10 were published to the world. Certainly all these
11 endeavors show the earnestness and sincerity of HIROTA
12 in attempting to adjust Sino-Japanese relations in a
13 most reasonable, conciliatory, and peaceful way.
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(47. Ex. 3257, T. 29635.
48. Ex. 2434, T. 19728.)

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25. In the meantime, Mr. AMAU, then the
 1 so-called spokesman of the Foreign Office, in
 2 speaking extemporaneously to newspaper men, made an
 3 unofficial statement which was reported in a dis-
 4 torted and exaggerated way by newspapers all over
 5 the world. The circumstances attending the release
 6 of that statement are clearly set forth in the evi-
 7 dence.⁴⁹ Other exhibits in evidence make it abundantly
 8 clear that said unofficial statement did not in any
 9 sense reflect the true policy of the Foreign Office
 10 and the Government.⁵⁰ The evidence is uncontra-
 11 dicted that Mr. HIROTA reprimanded AMAU for that
 12 indiscretion. The documents connected with this
 13 episode⁵¹ also show that HIROTA was faithful to the
 14 provisions of the Nine-Power Treaty and that he did
 15 not have the slightest intention to infringe upon
 16 the rights of other powers in China under that Treaty.
 17 Moreover, the evidence stands uncontradicted that
 18 Mr. HIROTA assured Ambassador Grew and Ambassador
 19 Lindley that the AMAU statement was wholly unauthor-
 20 ized and unofficial and that Japan respected both the

- 23 49. Ex. 3241, par. 5 (Tr. 29481-85).
 24 50. Ex. 936 (Tr. 9393); Ex. 3244 (Tr. 29578);
 Ex. 3245 (Tr. 29585).
 25 51. Ex. 936 (Tr. 9393); Ex. 3246 (Tr. 29587);
 Ex. 3250 (Tr. 29611).

1 letter and the spirit of the Nine-Power Treaty
2 notwithstanding the fact that Japan did not enjoy
3 equality of opportunity in China by reason of the
4 Japanese boycott. And HIROTA took that position
5 notwithstanding a substantial body of opinion in
6 Japan regarded the Nine-Power Treaty as a dead
7 letter since the Chinese announced unilaterally from
8 at least 1929 the abolition of all extraterritorial
9 rights of all powers and said body of opinion other-
10 wise regarded that Treaty as being unworkable and
11 impractical.

12 26. Despite the long continued efforts of
13 HIROTA to adjust Sino-Japanese relations, the situa-
14 tion did not progress as he desired. Especially in
15 North China, skirmishes sporadically took place
16 between Japanese and Chinese troops beginning about
17 May or June of 1935 at several points in North China
18 and in Chahar. In November of 1935 the Chitung
19 regime was established and that situation brought
20 forth an echo in China in the form of renewed and
21 intensified anti-Japanese activity, which resulted
22 in the attempted assassination of Wang Ching-wei,
23 who was shot, and the assassination of Tang Yu-Jen,
24 the then Vice-Minister for Foreign Affairs and
25

1 trusted friend of Wang.⁵² Thus, HIROTA's efforts
2 toward rapprochement got a definite set-back.

3 With respect to the threatening situation
4 in North China, as was reported in telegrams to the
5 Foreign Ministry from the diplomatic authorities
6 stationed in China,⁵³ the responsible heads of the
7 Nationalist Government protested to the Japanese
8 Government; while at the same time they expressed
9 hearty approval of HIROTA's policy toward China.⁵⁴
10 Thus, the Foreign Minister, in order to realize the
11 rapprochement in Sino-Japanese relations, was compelled
12 to direct his attention toward the pacification of
13 the situation in North China, including admonitions
14 as far as lay within the power of the Foreign
15 Ministry about certain activities of the military
16 in that area;⁵⁵ but to his deep regret the task was
17 not always within his power.
18

19 In this connection the prosecution alludes
20 in its summation at FF-49 to a conversation alleged
21 to have taken place between HIROTA and Baron HARADA
22 on the subject of the concentration of Japanese
23 troops in the vicinity of Shanhaikuan. The excerpt

24 52. Ex. 3241, par. 8, 12, 13 (Tr. 29481, 29488,
25 29489, 29492).

53. For example, Ex. 3256 (Tr. 29632).

54. Ex. 3257 (Tr. 29635).

55. Ex. 3241 (Tr. 29489).

1 from the HARADA-SAIONJI Memoirs, exhibit 3779-A,⁵⁶
2 introduced by the prosecution, discloses HIROTA's
3 anxiety about the arbitrary movement of Japanese
4 troops. This exhibit shows that he was, in fact,
5 assured by the War Minister that troops would not be
6 permitted to move southward without an Imperial
7 Command and HIROTA certainly was confident that the
8 Emperor would not grant such permission. This matter
9 was kept secret because its revelation would have
10 provoked trouble from the Chinese side as well as
11 retaliatory measures from the Japanese militarists.

12 Here it is necessary to recall the stormy
13 situation in Japan on the eve of the "February 26"
14 Incident. As the Supreme Command occupied a unique
15 position and held both de jure and de facto authority
16 there were some obvious limits to the authority and
17 power of the Foreign Minister to effectively inter-
18 fere and, consequently, the Foreign Minister was in
19 an extremely delicate and unenviable position in his
20 efforts to maintain the peace in North China in late
21 1935. His practical exhibition of good sense during
22 those critical days certainly avoided a tragic colli-
23 sion at that time. Of course, the Army had its own
24 side and point of view about what really transpired
25 56. Tr. 37789.

1 in North China late in 1935 and under the Japanese
2 system of government they were entitled to maintain
3 their point of view. What is of emphatic importance
4 here is that the Foreign Minister strove very hard
5 to maintain the peace and at the same time sought a
6 solution of the obstacles which stood in the path
7 of stable and good Sino-Japanese relations. There
8 is not a single line of testimony or inference or even
9 suspicion that HIROTA was engaged in a common plan
10 and conspiracy in conjunction with the military to
11 accomplish any of the objects so recklessly alleged
12 in the Indictment.

13 During 1936 and up until the outbreak of
14 the Marco Polo Bridge Incident on 7 July 1937, the
15 Japanese Ambassador continued talks, whenever the
16 occasional opportunity afforded, to work out a
17 fundamental rapprochement in Sino-Japanese relations;
18 but all this came to naught which was in large part
19 due to the internal political situation in China
20 which bordered on chaos, if not chaos itself. In
21 1936 Chiang Kai-shek was kidnapped and this in turn
22 gave rise to the celebrated Sian Incident. Various
23 interpretations have been put on the outcome of the
24 talks between Chiang Kai-shek and Chang Hsueh-Liang
25 but the fact remains that shortly after the release

1 of Chiang Kai-shek the Communist anti-Japanism front
2 was strengthened; and throughout China thereafter
3 the tom-toms were beating once more along the line
4 of anti-Japanism and boycott. Also there were numer-
5 ous instances of assault against Japanese nationals
6 and danger to Japanese property. Here it must be
7 recalled that in 1935 the Communists of China had
8 already declared "war" against Japan and that the
9 entrenchment of Communism in China, going back as it
10 did to the days of Chiang Kai-shek, who first wel-
11 comed its support in 1924 and then temporarily
12 ousted it by armed force in 1927, was viewed from
13 the very beginning as a matter of serious menace
14 and proportions. Communism in the Far East was and
15 still is a matter of much grave concern to the
16 stability and welfare of the Far East.

17
18 It cannot be too emphatically emphasized
19 that from the time Mr. HIROTA assumed Foreign
20 Ministership in September 1933 until he resigned as
21 Prime Minister in February 1937, and even thereafter
22 up until the outbreak of the Marco Polo Bridge
23 Incident, there had not been the slightest effort
24 on the part of the Foreign Minister to put the least
25 degree of pressure upon China to "recognize" Man-
churia. On the other hand the Foreign Ministry had

1 recognized the internal political situation within
2 China, the dilemma in which the Chinese were placed
3 as a result of the Mukden Incident and the rise of
4 Manchukuo as an independent government; and still
5 on the other hand the Chinese recognized that it was
6 virtually impossible for the Foreign Minister to
7 undo a "fait accompli" and in this situation both
8 sides were sensible enough to lay aside for the time
9 being the question of the recognition of Manchukuo
10 as though it was like a "reef in the sea." On the
11 contrary the Chinese during that period put up,
12 more or less, a frozen front and it was the Japanese
13 who went out of their way to cultivate them in
14 whichever way an opportunity might occur in order
15 to erase potentialities for future friction and to
16 effect a fundamental rapprochement in relations.
17 That HIROTA had a wise head as to future dangers and
18 need for a fundamental readjustment is abundantly
19 demonstrated by evidence wherein he anticipated that
20 upon the termination of the naval limitation agree-
21 ments the Western powers would suspect that Japan
22 intended to deal with China "in her own free way";
23 and in order to negate such a suspicion HIROTA
24 intended to negotiate a strong treaty with China
25 with respect to China's independence and integrity,

1 thereby powerfully demonstrating to the world the
2 true and peaceful intentions of Japan toward China.⁵⁷
3 Even though the many overtures looking toward funda-
4 mental peace on the part of Japan did not materialize
5 satisfactorily up until the Marco Polo Bridge Inci-
6 dent, Mr. HIROTA never gave up his endeavors in
7 this connection. During this entire period Japan
8 really asked for only three things: (1) Chinese
9 friendship and cooperation in personal relations
10 and trade, with respect to which no one can find
11 any possible fault; (2) cooperation against the
12 Communist menace, concerning which a large portion
13 of the world can find no fault, then or now; and
14 (3) suppression of anti-Japanism and anti-Japanese
15 teaching in the schools, the elimination of which
16 was obvious to the whole world if there were to be
17 any fundamental instinct and cooperation toward
18 peaceful relations among people. So much for the
19 effort on the part of Mr. HIROTA to adjust Sino-
20 Japanese relations up to the Marco Polo Bridge
21 Incident.

22
23 SECTION 4. NAVAL LIMITATION.

24 27. Japan served notice of her intention
25 to terminate the Washington Naval Treaty in December
57. Ex. 3873-A (Tr. 38651-2).

1 1934 to take effect in December 1936 in accordance
2 with the express stipulations of that Treaty. She
3 withdrew from the London Naval Conference in January
4 1936. The prosecution has seized upon these lawful
5 transactions as indicia of an intention to prepare
6 for aggressive warfare. These two measures occurred
7 during the tenure of Mr. HIROTA as Foreign Minister;
8 but in so far as Mr. HIROTA is concerned, suspicion
9 of the prosecution as to the purposes behind Japan's
10 action on those occasions falls flat. In the first
11 place Japanese public opinion was strongly opposed
12 from the first to the 5-5-3 ratio; this in turn was
13 mixed up with the idea that America and Britain were
14 bent upon making the Japanese content with a sense
15 of "inferiority"; and this produced some psychologi-
16 cal reactions in Japan, especially in the eyes of
17 the career officers in the Japanese Navy. Here the
18 Tribunal must also realize that Japan is an island
19 nation; all its principal cities are located along
20 the seacoast; the Soviet Union maintained a sizeable
21 naval force at all times at Vladivostok and that it
22 was possible entirely to surround the islands of Japan
23 with naval power and destroy all its principal cities
24 by shelling from the seas, not to say anything about
25 the rapid growth of air power. What Japan required

1 in the way of naval armament was a matter primarily
2 within the competence of the Supreme Command of the
3 Navy. It did not lay within the province of the
4 Foreign Minister to overrule the Supreme Command
5 of the Navy which was answerable only to His
6 Majesty.⁵⁸ In 1934 the Navy had already determined
7 that it would terminate the Treaty of 1930; the
8 Tribunal will realize that this position of the Navy
9 was firmly entrenched shortly after Mr. HIROTA first
10 came to the Foreign Ministry in September 1933. The
11 fact that HIROTA was personally opposed to the view-
12 point of the Navy and was in favor of compromise
13 and concessions in tonnage in favor of America and
14 Britain and wanted to resign even in 1934 if he were
15 required to carry out "strait-laced" diplomacy
16 appears from the HARADA-SAIONJI diary with respect
17 to which the prosecution seems to place its main
18 reliance for the real inside story of what transpired
19 in Japan.⁵⁹

21 28. The Japanese delegation to the pre-
22 liminary disarmament conference held in London in
23 October 1934 advanced the idea of a "common maximum
24 upper limitation" in lieu of the "ratio" and made

25 58. Tr. 35514.

59. Ex. 3870-A (Tr. 38643), Ex. 3871 (Tr. 38646).

1 extended and sincere efforts to have that idea
2 accepted; and while those conversations were going
3 on the Japanese Government refrained from taking
4 any unilateral action to abrogate the Washington
5 Treaty so as to cause the least repercussion in
6 international relations. When these conversations
7 failed, the Japanese Government on 29 December 1934
8 served notice through the Ambassador to Washington
9 of its intention to terminate the Treaty in accordance
10 with its provisions.⁶⁰ HIROTA declared in his
11 address before the Diet on 22 January 1935 that al-
12 though Japan had given notice of termination, the
13 Government had no desire to proceed with an expansion
14 of armament and, on the contrary, he earnestly wished
15 that, at the coming negotiations among the powers, a
16 new, fair and just agreement might be reached based
17 on the principle of drastic disarmament and the prin-
18 ciple of non-menace and non-aggression.⁶¹

19
20 29. The Japanese delegates to the naval
21 disarmament conference held in London at the end of
22 1935 made patient and extended efforts to reach a new
23 agreement, keeping in mind the intention of the
24 Japanese Government and the Foreign Minister with

25 60. Affidavit of ENOMOTO, Ex. 3011 (Tr. 26780).
61. Ex. 3247 (Tr. 29591).

1 respect to "allaying the state of uneasiness then
2 existing throughout the world," and the "lightening
3 of the people's burden," which of course had reference
4 to the terrific tax load carried by the leading
5 nations of the world in supporting armaments which
6 they believed, according to their own way of thinking,
7 constituted the essential of self-defense. The
8 Japanese proposal for drastic disarmament, such as
9 the abolition of aircraft carriers, capital ships,
10 etc., having failed to attract any enthusiasm from
11 Britain and America, the Japanese Government, in an
12 effort to save the situation, sent a new instruction
13 to the delegates urging them to renew their efforts
14 to reach an agreement and on that occasion stated,
15 "If even then Japan's thesis does not receive the
16 final approval of the other powers, withdrawal from
17 the conference may be unavoidable, but even in such
18 an eventuality, in order to avoid unfavorable effects
19 upon international relations, efforts should be made
20 to save the situation by having the five powers agree
21 to matters on which they can come to agreement, and
22 then to have the powers concerned make a joint
23 declaration not to engage in an armament race before
24 bringing the conference to a close." The delegates
25 continued their negotiations in a final effort to

1 reach an agreement, but everything failing, they
2 left the conference on 15 January 1936.⁶² On 21
3 January 1936, immediately after the withdrawal from
4 the conference, Mr. HIROTA declared in his address
5 before the Diet "Our Government respects, however,
6 the spirit of non-menace and non-aggression irre-
7 spective of the existence of a disarmament treaty,
8 and has no intention whatever of provoking armament
9 competition. Moreover, it is needless to say that
10 our Government will never falter in its intention
11 to cooperate with other powers for the cause of dis-
12 armament in order to establish world peace." The
13 same idea was expressed by Mr. HIROTA in an informal
14 talk on the same day following the withdrawal of the
15 Japanese delegates from the conference⁶³ and also on
16 other occasions.⁶⁴ The withdrawal from the confer-
17 ence was not the last word on the subject as far as
18 HIROTA was concerned. In his speech before the House
19 of Representatives on 4 March 1938, he declared his
20 hope that the chance would soon come to have a new
21 talk on disarmament among the powers.⁶⁵

23 62. Ex. 3011 (Tr. 26780).

24 63. Ex. 2226-A, introduced by the prosecution
(Tr. 15977).

25 64. Ex. 3872-A (Tr. 38649); Ex. 3873-A (Tr. 38651-2).

65. Ex. 3289 (Tr. 30002).

1 30. The deep-seated and long-standing
2 feeling among the Navy and the Japanese people with
3 respect to the ratio system can be readily gauged
4 from the internal dissension caused by the 1930
5 agreement. The 1930 agreement was signed by the
6 Japanese delegates, including a naval representative,
7 but insofar as ratification back home was concerned,
8 it ran a gauntlet of fire; that is to say, the
9 Supreme Command of the Navy took the position that
10 the delegates had infringed upon the competence of
11 the High Command; and in that situation ratification
12 was pushed through in strange circumstances. One
13 aftermath was the assassination of Premier HAMAGUCHI,
14 and this was said to have drawn in its train the "May
15 15" Incident and the "February 26" Incident. It was
16 during this restless period, when the Japanese were
17 literally suffering from "growing up" pains, that
18 Mr. HIROTA, in his constant endeavor to promote peace
19 and conciliation with all nations, was placed in the
20 position of being between Scylla and the Charybdis.
21 Even during those days HIROTA was the principal
22 spokesman for the principle of non-menace and non-
23 aggression among all nations and that the absence of
24 a treaty did not imply an armament race. HIROTA as
25 Foreign Minister and later as Premier, was powerless

1 to overrule the position taken by the Navy through-
2 out; all that he could do in those circumstances was
3 to see that the termination of the limitation treaty
4 caused the least foreign repercussion. Moreover, at
5 the time Japan announced its intention to abrogate
6 the treaties Admiral OKADA was the Premier and his
7 pacific political ideas are well known to the Tribunal
8 as well as the fact that the Chief Prosecutor re-
9 ferred to him as being a person in whom "the prosecu-
10 tion has great confidence."^{65a}

11 31. Likewise the Japanese refusal to grant
12 reciprocal exchange of information with respect to
13 construction after the lapse of the treaties re-
14 flected solely the position of the Navy and HIROTA,
15 in view of the fact that such refusal was not a
16 breach of any existing treaty obligation, was power-
17 less to do anything about that situation. The
18 prosecution in its summation at F-72 and FF-22 refers
19 to the so-called "consular espionage" as an aid to
20 Japan's naval attack and plans. The evidence to
21 support this is exhibit 1249⁶⁶ but this piece of
22 evidence concerns the activities at Honolulu in 1941
23 ar.³ has no connection with HIROTA as he was then out
24 of office. In fact there is not the slightest bit
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65a. Tr. 29301.

66. Tr. 11184.

1 of evidence that during HIROTA's tenure of office
2 the Foreign Office participated in espionage in any
3 part of the Pacific or elsewhere.

4 32. The prosecution has pointed out that
5 the keels for the battleships "Yamato" and "Musahi"
6 were laid about 1937, to be completed about 1941 or
7 1942, were already under construction when HIROTA
8 was Foreign Minister in the First KONOYE Cabinet
9 (his last public office).⁶⁷ But there is nothing to
10 show that HIROTA or other civil members of the
11 Cabinet were informed of or had any knowledge of the
12 construction of vessels of such a type or size. All
13 the evidence in the case shows that naval construction
14 was carried on with the idea of secrecy and security.
15 Neither the Foreign Minister nor any Minister on the
16 civil side of the Government had any power to inter-
17 fere with the prerogative of the High Command with
18 respect to the details of naval construction and
19 within the scope of the budget they were all-powerful.
20 There is not a single line of evidence in the entire
21 case to show that HIROTA, during the occupancy of
22 his last high office in the First KONOYE Cabinet,
23 had the slightest knowledge with respect to the
24
25 67. Ex. 913 (Tr. 9240).

1 details of naval construction or any plan with
2 respect thereto. Altogether the evidence with
3 respect to actual construction during HIROTA's
4 entire tenure (September 1933 - May 1938) is puny
5 and affords no basis whatever for a judgment that
6 during that period Japan was engaged in building
7 excessive armaments for any such purpose as is
8 alleged in the Indictment.

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SECTION 5THE HIROTA CABINET AND MILITARY ACTIVITIES

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3 33. The period during which Mr. HIROTA
4 served as Foreign Minister in the SAITO and OKADA
5 Cabinets and as Premier was characterized by the
6 increasing disposition of certain elements within the
7 military who most of the time were as hard to identify
8 as a mosquito in the dark and whose activity was re-
9 flected in proneness to dip into politics and take in-
10 dependent action, to correct what they regarded as
11 mal-administration of the government with respect to
12 both internal affairs and foreign policy. HIROTA,
13 working in such a charged atmosphere, never changed
14 his consistent and conciliatory foreign policy and he
15 sought to maintain public order to suppress extreme
16 elements and to uphold pacifism against militant ideas
17 expressed here and there. His numerous addresses be-
18 fore the Diet during this period furnish abundant
19 proof that he made constant efforts despite adverse
20 criticism and attacks to promote international peace
21 and cooperation and to direct public opinion in the
22 right direction. This consistent attitude of Mr. HIROTA
23 throughout that long period is in direct conflict with
24 the allegations of the indictment with respect to "the
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1 organization of Japanese politics and public opinion
2 for war."⁶⁸

3 34. HIROTA was recommended by Prince SAIONJI,
4 the last "genro" and a noted liberal and pacifist
5 according to all the evidence in this case, immediate-
6 ly after the "February 26" Incident^{68a} to the post of
7 Premier. Prince SAIONJI recognized the sound and
8 steady character and personality of Mr. HIROTA and
9 selected him in those stormy days as the one man who
10 could bring order out of chaos and restore the nation
11 to an even keel. Of course it goes without saying
12 that HIROTA was selected in order to restore law and
13 order in Japan and not to lend the faintest encourage-
14 ment to those unruly factions within the army which
15 had promoted a reign of terror in the City of Tokyo
16 for several days. Here it ought to be recalled that
17 immediately upon the appointment of Mr. HIROTA as
18 Premier those responsible for the "February 26" Inci-
19 dent were subjected to military trials and were meted
20 out drastic punishment; and those who held high office
21 in the army, although they had nothing directly to do
22 with the uprising within the army, retired because of
23 responsibility for the lack of discipline. HIROTA,
24 upon acceptance of that tremendous responsibility,

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68. Annex A, Sec. 6 of the Indictment.
68a. Ex. 176 (tr. 1831-32).

1 organized his cabinet with "thorough enforcement of
2 military discipline, putting the peoples' mind at
3 rest and the establishment of peaceful diplomacy" as
4 its avowed mission; and he maintained those principles
5 throughout the Premiership. ⁶⁹ Moreover, another
6 evidence of the character of this Cabinet is the fact
7 that HIROTA included in it four prominent members of
8 the political parties in spite of army opposition,
9 and that all the members were civilians except the War
10 and Navy ministers.

11 35. In May 1936 the HIROTA Cabinet authorized
12 a revision of the ordinance governing the official
13 organization for the Ministries of War and Navy which
14 limited candidates for Ministers and Vice-Ministers
15 to generals and admirals on the active list. The idea
16 for the revision did not originate with HIROTA and when
17 the proposal was submitted to him he expressed puzzle-
18 ment as to the necessity for the revision in view of
19 the fact that it did not change the long-standing and
20 existing practice to appoint only those on the active
21 list. Of course, the idea behind this proposal was to
22 prevent top officers who had retired because of a sense
23 of responsibility arising out of the "February 26"
24

25 69. Affidavit of TSUGITA, Ex. 2366 (tr. 18,176)

1 Incident from again returning to the War Ministry.
2 The indictment and arguments advanced by the prose-
3 cution attempt to wholly distort the meaning and intent
4 of the revision and make it appear that the revision
5 gave to the militarists the opportunity of gaining
6 control over the government." The witness TSUGITA,
7 the Director of the Bureau of Legislation at that time,
8 pointed out ⁷⁰ the reasons underlying the revision:
9 (1) the revision was made on the practical ground that
10 Ministers of War and Navy, who supervised military
11 personnel under orders from the High Command, should
12 likewise be personnel in active service; and (2) that
13 the long-standing preceding practice had been to
14 appoint only a general, lieutenant-general, admiral
15 or vice-admiral on the active list. Therefore, the
16 uncontradicted evidence in the case is that the revi-
17 sion simply legalized the existing practice. It created
18 no new system and there is not a jot of evidence in
19 the entire case to show that anyone connected with the
20 revision entertained any idea of making the path for
21 the growth of militarism in Japan easier. In view
22 of the circumstances under which the revision was made
23 it would be much more logical to draw the inference
24 of innocence. In the report of the Privy Council on
25 70. Ex. 2366 (tr. 18,176).

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1 said revision they followed the same reasons stated
2 above and stated in so many words that the purpose of
3 the legislation was the completion of military dis-
4 cipline. Despite the revision, it was not impossible
5 to appoint War and Navy Ministers and Vice-Ministers
6 from personnel on the reserve list; and all that was
7 required was an order transferring a person from the
8 reserve to the active list which could be done at any
9 time without regard to the length of retirement or age.
10 The failure of General UGAKI to organize a cabinet in
11 January 1937 had nothing to do with the revision. The
12 witness TSUGITA explained the circumstances involved
13 in the failure of General UGAKI to organize a cabinet
14 and it had nothing whatever to do with the revision.⁷²
15 Moreover, Premier HIROTA asked at the cabinet confer-
16 ence, "Will this reform not lead to a situation in
17 which those commanded to form the cabinet will find it
18 difficult to appoint future War and Navy Ministers?"
19 To this both the Army and Navy Ministers gave their
20 assurances: "There is no fear that such a situation will
21 arise." Consequently, on the whole evidence there is
22 not an iota of truth to the allegation of the prosecu-
23 tion that the revision gave the militarists a chance
24 to tighten their grip on politics.
25

71. Ex. 2367 (tr. 18,183).

72. Ex. 3258 (tr. 29,648).

36. The fact that HIROTA consistently re-
1 fused to side with or yield to extreme views at differ-
2 ent levels within the army is demonstrated beyond a
3 shadow of doubt by literally one hundred different
4 pieces of evidence in this case. The immediate reason
5 for the fall of the HIROTA Cabinet affords a graphic
6 illustration of HIROTA's refusal to side with army
7 attitudes and views. The reason for the collapse of
8 the cabinet had a direct connection with the effort of
9 War Minister TERAUCHI, who undoubtedly had some support
10 in the Supreme Command, to foist his views upon the
11 Premier at the expense of the House of Representatives.
12 In October 1936 the military advanced an opinion pub-
13 licly with respect to the reform of the parliamentary
14 system of Japan which in turn caused a sharp exchange
15 between the Diet, speaking principally through a prom-
16 inent member, Mr. HAMADA, and the War Minister; it came
17 to a head in January 1937 with the demand by the War
18 Minister for dissolution of the House of Representatives,
19 but HIROTA turned thumbs down on the demand out of
20 respect to the parliamentary system; whereupon the
21 War Minister tendered his resignation, and it appearing
22 that the army would continue its stiff attitude, the
23 cabinet resigned en masse. ⁷³ Had HIROTA been an
24 opportunist or inclined toward views entertained by
25

1 some elements in the army, he might very well have
2 taken a different stand on that occasion. This episode
3 with respect to the circumstances under which the
4 cabinet resigned furnishes powerful evidence to show
5 the real mental complexion, attitude and motives of
6 Mr. HIROTA in those trying days; and it also demon-
7 strates that Mr. HIROTA was not engaged at any time in
8 a conspiracy with the army.

9
10 SECTION 6

11 THE DECISIONS OF NATIONAL POLICIES DURING THE HIROTA
12 CABINET

13 37. The prosecution has claimed that a
14 series of decisions were made in 1936 which furnished
15 the whole backbone of the alleged conspiracies set
16 forth in the indictment. The prosecution referred
17 particularly to exhibits 978, 977, 215, 216, 704, 217,
18 and 979.⁷⁴ As exhibits 215 and 217 deal with the policy
19 toward North China, it will be more appropriate to treat
20 those exhibits under a separate section; and as ex-
21 hibit 216 is an excerpt taken from exhibits 977 and
22 979, the matter will be clarified by dealing with the
23 two latter exhibits and exhibit 704.
24

25 74. Tr. 9548, tr. 9542, tr. 2719, tr. 2720, tr. 7523,
tr. 2728, and tr. 9549.

1 ⁷⁵
2 "ith respect to exhibits 977 and 979, deal-
3 ing with the principle of national policy, it should
4 be noted that the original draft (exhibit 977) pre-
5 sented by the army and navy on 30 June 1936 was consid-
6 ered at the Five Ministers Conference (exhibit 978),
7 and after amendment, was approved on August 11, 1936,
8 by the Prime, War, Navy, Finance and Foreign Ministers
9 (exhibit 979). Exhibit 704, "Foreign Policy of the
10 Empire," was decided on August 7, 1936, at the Conference
11 of Four Ministers: that is to say, the Premier, Foreign
12 Minister, War Minister, and Navy Minister. These docu-
13 ments, contrary to the claim of the prosecution, by no
14 means portray any decision to pursue an aggressive
15 policy in East Asia and the South Seas. A mere perusal
16 of the documents show that they are based entirely upon
17 considerations of a pacific nature and deal entire-
18 ly with defensive measures to insure the position of
19 Japan as a stabilizing influence in East Asia. The
20 Minister of the Navy clearly stated that the expression
21 appearing in exhibit 979 "Fundamental Principle of
22 National Policy," paragraphs 1-3, reading "We should
23 be prepared for Britain and America," did not mean that
24 Japan should regard England and America as enemies.
25 On the same occasion the Foreign Minister sounded a

75. Tr. 9542, tr. 9549.

76. Ex. 978, par. 3 (tr. 9,548)

1 warning that "Japan should not only be regardful of
2 keeping friendly relationship with England and America
3 but should strive further to assure a more concilia-
4 tory attitude than in ordinary circumstances." Ex-
5 hibit 704, paragraphs 3-4⁷⁷, "Foreign Policy of the
6 Empire," also demonstrates that the policy adopted had
7 no offensive significance against England and America.
8 Regarding the "South Seas" (exhibit 979), nothing
9 appears to indicate any intention with respect to ad-
10 vance by aggression or war. On the contrary, references
11 to the "South Seas" refer to peaceful economic ex-
12 ploitation and advancement of Japan's international
13 trade by ordinary trade procedures. For example,
14 exhibit 979 contains a paragraph, "For the further-
15 ance of our plan to achieve the social and economic
16 development of our Empire toward the South Seas, es-
17 pecially on the outer South Sea Islands area, we should
18 take a gradual and peaceful measure, always avoiding to
19 stimulate other nations" (paragraph 1); and exhibit
20 704, "Foreign Policy of the Empire," contains a sen-
21 tence: "We should be discreet not to stimulate the
22 powers concerned but try to efface their apprehension
23 towards our Empire, and we have to endeavor to make our
24
25 77. Tr. 7523.

progress gradually and peacefully" (paragraph 5).

1 Exhibit 704 also positively states with respect to the
2 Philippines that "If necessary, we shall not hesitate
3 to assure her neutrality": and with respect to the
4 Netherlands East Indies, "If necessary, we shall not
5 refuse to conclude a non-aggression treaty with Hol-
6 land" (paragraph 5). Moreover, in connection with
7 the Netherlands, it must be remembered that the Treaty
8 of Judicial Settlement, Arbitration and Conciliation,
9 although it had been signed on April 19, 1933, was
10 ratified on June 8, 1935, through the interest and
11 sponsorship of HIROTA as Foreign Minister in the OKADA
12 Cabinet; and that treaty took effect on August 12, 1935.

14 THE PRESIDENT: We will recess for fifteen
15 minutes.

16 (Whereupon, at 1445, a recess was
17 taken until 1500, after which the proceed-
18 ings were resumed as follows:)
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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal,
continuing:

At the time the policy decisions of 1936
were reached Japan felt that she was being menaced by
the activities of the U.S.S.R. in Eastern Siberia and
elsewhere. By 1935, the U.S.S.R. had developed a
standing army of immense proportions, had moved a
large army to Eastern Siberia along the Manchukuo bor-
der, had pushed through the double tracking of the
Trans-Siberian Railroad through blizzard conditions
and had otherwise assumed an uncertain attitude toward
Japan. Moreover, the Japanese had suspected for a long
time that the Soviet Union was straining to attack
Japan by way of retaliation for 1905. Exhibit 979,
paragraph 1 (3), shows that the Japanese national
policy aimed at a defensive posture against that men-
ace; and there is nothing in the document or in collat-
eral circumstances to indicate that the Japanese Gov-
ernment adopted a policy for aggressive action against
the U.S.S.R. or any other nation. Exhibit 704 "Foreign
Policy of the Empire", No. 2 (Gists of Measures)
states in this connection "Japan must be strictly

1 cautious towards the Soviet Union so as not to give
2 rise to further troubles of its own accord, but to
3 endeavor to solve pending problems by means of peace-
4 ful measures exclusively", and it also provided for
5 the establishment of committees to deal with demarca-
6 tion of boundaries and disputes arising therefrom; and
7 it also stipulated that a proper opportunity should be
8 seized to propose the creation of a non-armed zone
9 and expressed the desire of the Japanese Government to
10 conclude a non-aggression pact with the Soviet Union
11 in case important pending questions could be solved.
12 These facts and all the other evidence in the case
13 point only to the peaceful nature of the Japanese
14 policy toward the Soviet Union.

15 Further, the above exhibits contain provisions
16 for correlation between diplomatic and military mat-
17 ters; for example, Exhibit 979, paragraph 2, and the
18 opening phrase of Exhibit 704 show the efforts on the
19 part of the civil members of the Cabinet to check dip-
20 lomatic activities of the military, especially those
21 in China, which in the past on occasions had been taken
22 arbitrarily against the policy of the Government and
23 the Foreign Office. This is nothing more than an
24 effort to wipe out so-called "double diplomacy" which
25 in the past had constituted a serious obstacle to the

1 realization of the peaceful and conciliatory foreign
2 policy initiated by Mr. HIROTA. The statement of the
3 prosecution in this connection that "In HIROTA's mind
4 'national defense' did not stop at defending Japan or
5 resisting attack, but meant aggression", is, of course,
6 downright absurd; and in connection with the final sum-
7 mation of the prosecution, they carried the matter one
8 step further by converting the words "national defense"
9 appearing in the policy decisions to that of "war"
10 and in that connection advanced the wholly specious
11 argument that "diplomacy" and "war" sound better to-
12 gether, as bedfellows, in a single document than the
13 expressions "diplomacy" and "national defense". Of
14 course, there is nothing inconsistent in associating
15 diplomacy and national defense, a course pursued by
16 every power in the world. The following sections will
17 throw additional light upon the actual measures taken
18 by the HIROTA Cabinet to carry out its policy of peace
19 and conciliation with respect to all nations.
20

21 SECTION 7

22 SINO-JAPANESE RELATIONS DURING THE HIROTA CABINET

23 38. About a month after the formation of the
24 HIROTA Cabinet, Mr. ARITA was appointed to the post of
25 Foreign Minister. ARITA followed the conciliatory
foreign policy of HIROTA and stated in the Diet in May

of 1936 his intention to act on the basis of the HIROTA
1 "Three Principles" in dealing with China. ⁷⁸ ARITA's
2 position was also difficult in his relations with the
3 military. He steadfastly adhered to the fundamental
4 policy of peace between Japan and China although he had
5 to yield ground to the military to a certain extent in
6 subordinate points; and he knew, of course, that ultra-
7 nationalistic elements among the people, as well as
8 certain factions within the Army, which had been rising
9 since the Manchurian Incident and caused the "May 15"
10 and "February 26" Incidents, might ultimately cause a
11 general collision between the Japanese and Chinese
12 forces on the continent. The "Gist of Plans for Dealing
13 with North China" must be considered in the light of
14 those circumstances.
15

16 39. The original plan of the "Gist" (Ex. 215), ⁷⁹
17 dated 13 January 1936, was a plan of the War Ministry
18 and, contrary to the allegation of the prosecution
19 Summation at FF-48, the Foreign Office had nothing
20 whatever to do with its preparation, although it was
21 submitted to the Foreign Office. This plan contains
22 some expressions which at first blush might be inter-
23 preted as being inconsistent with the HIROTA "Three
24 Principles". Moreover, there were not a few among the
25

(78. Ex. 2507, T. 20,965)

(79. T. 2,719)

~~Kwantung Army and the military authorities in China~~

1 who supported such opinions and policies as are ex-
2 pressed in Exhibit 761⁸⁰ and those elements were disposed
3 to hasten the establishment of an autonomous govern-
4 ment in North China in connection with defense against
5 the Soviet Union and Communistic activities within
6 China. The Foreign Office deemed it necessary to
7 reconsider and amend the "Gist" submitted by the War
8 Ministry in order to suppress such military activities
9 and inclination, and to that end the matter was sent
10 to a liaison conference of the Ministries concerned.
11 The "Gist" having already been decided by the War Min-
12 istry, it became almost impossible for the Foreign
13 Minister to kill it or even subject it to radical alter-
14 ation; but, nevertheless, as a result of the liaison
15 conference, some important amendments were made and
16 this made its appearance in the form of the "Second
17 Gist of Plans for Dealing with North China"⁸¹ (Ex. 217),
18 Which was a decision of August 11, 1936 of the War,
19 Navy, Foreign and Finance Ministries. The difference
20 between the first and second "Gist" is as follows:
21 The words "self-government of North China" found in
22 the first "Gist" (Ex. 215) were replaced by "sectional
23 government of North China" which implied a state of
24
25 (80. T. 7,830)
(81. T. 2,728)

1 autonomy of lower grade; however, here it must be
2 noted that the English translation of exhibit 217
3 has confused those two terms or expressions with each
4 other, but the original in Japanese established a clear
5 distinction between them. Further, in the second
6 "Gist", the following paragraph was added to convince
7 the Japanese military authorities in China that the
8 Japanese Government did not have the slightest inten-
9 tion to establish or assist in establishing an inde-
10 pendent government in North China: "We should strictly
11 avoid such acts as would be suspected of disapproving
12 China's territorial right of North China or of bring-
13 ing about an independent country free from the Nanking
14 Government or of making North China an extension of
15 Manchukuo" (Ex. 217, para. 1); and it also contained
16 a stipulation providing for the respect of the vested
17 interests of third powers within China (para. 6). Here
18 also it is important to notice that the English trans-
19 lation of exhibit 217 has inadvertently omitted the
20 clause "The vested interests of the third powers will
21 be respected." In short, it may be safely said that
22 the second "Gist", which was the only one ever adopted,
23 showed the intention on the part of the civil side of
24 the government to confine, as far as possible, the
25 activities of the military within bounds and it also

1 illustrates the army's own policy and attitude at the
2 time. However, the matter of overriding importance is
3 that the second "Gist" was decided at an inter-
4 ministerial conference in which HIROTA did not partici-
5 pate and it may be recalled that in August 1937 he as
6 Foreign Minister in the First KONOYE Cabinet offered
7 to undertake the dissolution of the Eastern Hopei
8 regimes in order to facilitate the truce in China as
9 evidenced by exhibits 3280-A and 3280-B. This effort
10 on the part of the Foreign Ministry to keep the army
11 within its harness also clearly reveals the tug going
12 on between the Supreme Command and the civil side of
13 the government. By no means does it show that the
14 Foreign Ministry or Mr. HIROTA, as Premier, was en-
15 gaged in any common plan or conspiracy with the army
16 or any other group in Japan.

17 SECTION 8

18 THE ANTI-COMINTERN PACT

19 40. HIROTA was Premier at the time the Anti-
20 Comintern Pact with Germany was signed on 25 November
21 1936. That pact was concluded, as its text clearly
22 shows, with the sole objective of preventing the spread
23 of Communism and it provided merely for the exchange of
24 information between the two countries for that purpose.
25 (82. T. 29,935)

1 The annexed secret protocol contained no stipulation of
2 an aggressive nature. The pact means exactly what it
3 says and nothing more, and such being the case, it has
4 no probative value or tendency to establish any of the
5 allegations of the Indictment. In fact the prosecu-
6 tion frankly stated that if the pact meant nothing more
7 than what it purported to be on its face the prosecu-
8 tion would concede it had no significance in this
9 trial. It was clearly within the competence of the
10 Japanese Government to make such an agreement. An
11 examination of the circumstances attending its negotia-
12 tion and conclusion makes it clear that the Japanese
13 Government had no aggressive intention whatever in
14 concluding the pact. Foreign Minister ARITA in a tele-
15 gram (Ex. 2614)⁸³ addressed to Ambassador MUSHAKOJI at
16 Berlin, dated 8 May 1936, which initiated the negotia-
17 tions, suggested only the conclusion of a vague agree-
18 ment for rapprochement between the two countries, but
19 it contained no concrete proposal of any kind. With
20 exhibit 3267,⁸⁴ however, the matter took more definite
21 shape. Foreign Minister ARITA showed this document to
22 War Minister TERAUCHI and obtained his agreement on 24
23 July 1936 (Ex. 3266)⁸⁵. On examination of exhibit 3267,
24

25 (83. T. 22,474)
(84. T. 29,805)
(85. T. 29,883)

1 it is manifest that the fundamental policy of the then
2 Japanese Government consisted in taking every precaution
3 not to provoke the Soviet Union into war by stimulating
4 her unduly; all this notwithstanding the Japanese keenly
5 felt the Communist menace. Moreover, that document
6 shows that careful consideration was given at the time
7 lest the agreement should cause a sense of uneasiness
8 on the part of third powers, especially Britain, and
9 at the same time also shows the Japanese policy to seek
10 a political agreement with Britain. According to that
11 document the tentative plan for the anti-Comintern Pact
12 was submitted by the German side; the Japanese Govern-
13 ment amended it by restricting its scope to the end
14 that it might not be an obstacle to the maintenance of
15 peaceful relations with the Soviet Union. The evidence
16 shows that concurrently the Japanese Government planned
17 to make a similar agreement with Britain and that a
18 draft was actually in preparation at the time. Thus,
19 all the evidence shows the intention of the Japanese Gov-
20 ernment to conclude the anti-Comintern Pact exclusively
21 from a defensive point of view and there is not the
22 slightest evidence in the case to show that the Japan-
23 ese Government intended to form a common front with
24 Germany against Britain, America or any other country.
25

1 41. The Anti-Comintern Pact merely provided
2 for a mutual exchange of information with respect to
3 Communistic activities; the secret agreement merely
4 provided that in case the Soviet Union should attack
5 "without provocation" neither side would take any
6 action which would lighten the burden of the Soviet
7 Union in a war of aggression which seems to be nothing
8 more than the traditional definition of a neutral in
9 case of belligerency; that is to say to refrain from
10 giving assistance in either a negative or positive
11 form to one of the belligerents. In the explanation
12 made to the Privy Council on the final draft of the
13 Pact⁸⁶, Mr. Hirota made it clear that "The object of
14 the present Pact was simply to make it an instrument
15 for preparing for checking the armed pressure of the
16 Soviet Union and Bolshevistic activities." On that
17 occasion he also declared that Japan should, of course,
18 refrain from taking any positive measures which might
19 aggravate relations with the Soviet Union, that Japan
20 would constantly give its most devoted attention to
21 the demarcation of the boundary lines between Japan,
22 Manchukuo and the Soviet Union, the settlement of
23 boundary disputes, and other measures to be taken by
24 way of adjustment of the relations between the two
25 countries; and that the promotion of friendly relations
(86. Ex. 484, Tr. 22,480)

1 with the United States and Britain should be eagerly
2 sought; and he concluded his explanation by emphasizing
3 that the conclusion of the Pact "in no way whatever
4 implied that Japan fully approved of Germany's
5 principles in respect to her internal affairs or that
6 Japan would act in concert with her."

7 Foreign Minister ARITA also gave a detailed
8 explanation to the Privy Council of the Communist
9 activities of the Communist Internationale in China
10 and Manchukuo and pointed out the increase in the
11 armed pressure of the Soviet Union in the Far East.
12 This Pact was well within the competence of the Jap-
13 anese Government to conclude; it contains nothing
14 against any principle of international law; it does
15 not offend against any principle of political morality
16 whether gauged from its text or the intention of the
17 Japanese Government in negotiating it.

18 42. Italy proposed about the same time to
19 conclude a similar pact between Japan and Italy ⁸⁷ .
20 The HIROTA Cabinet gave no consideration to that
21 proposal because it feared at the time it would have
22 an undesirable influence upon Anglo-Japanese relations.
23 However, at a later period, when a rapprochement which
24 Mr. HIROTA had so earnestly sought with Britain
25 (87. Ex. 2615 and 2616; Tr. 22,500 22,502).

1 offered no prospect of success because of the attitude
2 assumed by Britain and other powers upon the outbreak
3 of the China Affair, the Japanese Government looked
4 with more favor upon the proposal of Italy to conclude
5 a similar pact. In view of the circumstances of those
6 days the Government could no longer turn a deaf ear
7 to the Italian proposal. However, in order to minimize
8 the unfavorable repercussion upon Anglo-Japanese
9 relations, it was finally decided to admit participa-
10 tion by Italy in the pact without strengthening in any
11 respect the substance of the instrument; and an agree-
12 ment to that effect was signed between Japan, Germany
13 and Italy on 9 December 1937; however, Italy was never
14 a party to the annexed secret agreement and in fact
15 knew nothing about it.

16 43. The Anti-Comintern Pact was never used
17 by the Japanese at any time for any unjust objective
18 during the period when HIROTA was Premier or during
19 the time he was Foreign Minister in the First KONOYE
20 Cabinet. Likewise the existence of that Pact had
21 nothing whatever to do with the China Affair or the
22 use of the good offices of the German Ambassador in
23 an effort to restore peace with the Chinese. Sight
24 must not be lost here that America and Britain had
25 consistently adhered to their "cold shoulder" attitude

1 toward Japan ever since the Mukden Incident, that
2 they had done practically nothing in the form of con-
3 crete measures to grasp HIROTA's efforts ever since
4 September 1933 to work out a fundamental rapprochement;
5 in those circumstances it was but natural that Japan
6 in order to break international isolation would look
7 around in the world for those nations who were friendly
8 disposed toward Japan: but this is not to say that
9 HIROTA approved German ideology with respect to its
10 internal affairs⁸⁸. At the time the Anti-Comintern
11 Pact was signed there was nothing to indicate that
12 Germany was about to embark upon armament expansion
13 and certainly nothing was in the air to suggest the
14 future activities of Hitler. While it is true that
15 Germany had reoccupied the Rhineland in 1936, still
16 Germany was only reoccupying its own territory and
17 otherwise there was nothing in German policy or state-
18 ments as of 1936 to foreshadow its course of action
19 from 1938 onward.
20

21 Section 9

22 THE CHINA AFFAIR

23 44. Mr. HIROTA was resting at his summer
24 villa when telegraphic news arrived of the Marco Polo
25 Bridge Incident. At that time he had been Foreign
(S8. Ex. 484, Tr. 5,957; see p. 7 of Exhibit)

1 Minister in the First KONOYE Cabinet (his last public
2 office) for about one month. There is not the faintest
3 suggestion anywhere in the trial that HIROTA expected
4 the outbreak of the Incident or that any plans had
5 been made by the Japanese Government by way of antici-
6 pation. He immediately returned to Tokyo and on
7 July 9, 1937 he attended the meeting of the Cabinet
8 Council which promptly decided upon a policy of non-
9 enlargement and speedy local settlement of the Incident;
10 and telegraphic instructions to that effect went out
11 to the Army ⁸⁹. A satisfactory agreement was reached
12 between the Japanese and Chinese forces on the spot
13 on the night of July 11, 1937 and had it been carried
14 out by the Chinese would have settled the matter com-
15 pletely. In that settlement the Chinese accented full
16 responsibility, agreed to punish the responsible
17 officers and blamed the outbreak upon Communist in-
18 flucnces ⁹⁰. Under the peculiar internal system pre-
19 vailing in China, the placidity and slowness of the
20 Foreign Office of the Nationalist Government to move,
21 the existence of various shades of autonomy in
22 different areas notwithstanding the fact that the area
23 acknowledged allegiance to Chiang Kai-shek, all pointed

24
25 (89. Affidavit of HORINOUCHI, Para 5,
Ex. 3260, Tr. 29,685)
(90. Ibid.)

1 to the fact that if the incident was to be confined
2 and promptly stopped that settlement on the spot
3 was the most efficacious method to attain that end
4 instead of the slower process of government to govern-
5 ment negotiations which would have delayed and made
6 more difficult a quick solution. The prosecution in
7 its summation criticizes this effort at local settle-
8 ment and suggests that it was another scheme on the
9 part of the Japanese to interfere in affairs in North
10 China at the local level; but that contention falls
11 flat when the uncontradicted evidence is considered
12 that instructions at the beginning of the incident
13 went out to HIDAKA, the Councillor at Nanking (the
14 Ambassador being then away), to take the matter up
15 directly with the Chinese Foreign Office to the end
16 that nothing would stand in the way of the policy
17 of non-enlargement and speedy local settlement⁹¹ and
18 when it is further considered that immediately upon
19 the decision of July 9, 1937, Mr. HIROTA personally
20 called in the Chinese Charge d'Affaires in Tokyo and
21 made the same representations to him. Hence, there
22 is not the slightest ground for the prosecution
23 contention that the Foreign Minister was ignoring the
24 (91. Affidavit of HIDAKA, Ex. 3273,
25 Tr. 29,901).

1 Nationalist Government of China in the effort to arrive
2 at a speedy local settlement ⁹² .

3 45. As previously stated, the Chinese showed
4 no good faith about carrying out the settlement agree-
5 ment arrived at on the night of July 11, 1937, and for
6 several weeks thereafter the days were extremely un-
7 certain. During those several weeks small clashes
8 occurred.

9 Unfortunately, the situation, which it had
10 been confidently expected in Tokyo would calm down,
11 grew worse by leaps and bounds. HIDAKA at Nanking
12 asked the Chief of the Chinese Foreign Office to
13 appreciate the efforts of Japan for a quick solution
14 and therefore not to interfere with the agreements
15 made on the spot and his full negotiations at Nanking
16 are explained in his testimony ⁹³ . As the Chinese
17 Foreign Office stuck to abstract discussions and
18 did nothing concrete to solve the North China situ-
19 ation, HIDAKA turned to personal negotiations with
20 Mr. Cheng Chung, Governor of Szechwan Province, who
21 was a powerful figure in the Chinese Government, a
22 confidant of Chiang Kai-shek, and presently Premier
23 of China, and an agreement was reached between the two
24
25 (92. Affidavit of HORINOUCI, Ex. 3260,
Tr. 29,682)
(93. Ex. 3273, Tr. 29,901)

1 on July 27, 1937 to settle the disturbance on the
2 basis of mutual evacuation of the opposing forces; but
3 the agreement came too late to be carried out. The
4 conflict on the spot was already spreading over more
5 ground. While all these negotiations between the Chinese
6 and the Japanese were being carried on, diplomatic
7 representatives of Britain, America and other powers
8 in Nanking were kept constantly informed by HIDAKA of
9 the negotiations ⁹⁴ .. Certainly the Foreign Office
10 would never have gone to such lengths had it been part
11 of a common plan or conspiracy to initiate a war of
12 aggression against China or any part of that country
13 and all these details reinforce the uncontradicted
14 evidence that the Foreign Ministry was making a sincere
15 and determined effort to settle the matter without the
16 loss of a single day. About the time the agreement
17 had been reached with Chang Chung, the Nationalist
18 Government admittedly was moving huge armies day by
19 day to the area of conflict in North China.
20
21
22
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(94. Ibid.)

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46. At the Cabinet Council meeting of
1 July 11, 1937 when the cabinet had no information what-
2 ever that a local settlement had been or would be
3 reached on the spot, although the actual agreement
4 subsequently reached on the night of July 11 proved
5 abortive, the War Minister proposed that authority be
6 granted to make preliminary preparations for re-
7 enforcement in event the situation got worse, and as
8 the rest of the Cabinet Council demurred, the War Minis-
9 ter went on to explain that without authorization to
10 make those preliminary preparations he could not be
11 held responsible for the protection of the garrison in
12 the Peiping and Tientsin areas, not to say anything
13 about the protection of Japanese lives and property in
14 that area. Whereupon, the Cabinet Council granted
15 permission to make preliminary preparations but on
16 that occasion the cabinet reached a full understanding
17 that in case any troops should be dispatched to North
18 China the object would be for the sole purpose of
19 protecting Japanese residents and forces in North
20 China. Of course, this understanding in the council
21 about preliminary preparation was not publicized because
22 of fear that it might aggravate the situation; and it
23 was nothing more than a preliminary preparation against
24 the worst. The situation having gotten appreciably
25

1 worse on July 20, 1937, and it becoming increasingly
2 apparent that the Chinese were unwilling or unable to
3 carry out the local settlement of July 11, 1937, the
4 Cabinet Council, having in mind all the long-standing
5 background in China, which had been full of turmoil,
6 uncertainty and tears, authorized the War Minister on
7 July 20, 1937 to prepare for the mobilization of three
8 home divisions for dispatch to China in the face of
9 the intense situation then prevailing. Here the
10 Tribunal must remember that three home divisions would
11 not constitute more than 45,000 men and as the Chinese
12 had already begun the movement of at least 200,000
13 troops toward North China there could not have been
14 the faintest idea in the minds of the cabinet that the
15 dispatch of three home divisions would constitute a
16 "punitive" expedition or anything calculated to thrash
17 the Chinese. It was simply a self-defense force
18 which, while it might hold its own against overwhelming
19 numbers of Chinese troops, could not possibly go along
20 to wage a war of aggression against China. Between
21 July 12 and 26th, the situation became extremely
22 aggravated, the Langfang Incident and other fighting
23 broke out in rapid succession; and on July 27, 1937
24 orders were issued for the mobilization of three home
25 divisions in Japan proper. Under the exceedingly

1 complicated situation then existing in China, the
2 safety of Japanese nationals and legitimate property
3 interests was seriously endangered. The Foreign Office
4 immediately increased the staff, chiefly minor offi-
5 cials, in the Japanese diplomatic and consular offices
6 in North China.⁹⁵ This increase in the diplomatic staff
7 was quite proper in view of the possible increase of
8 business in those offices arising out of the protection
9 of Japanese residents and legitimate property rights
10 under emergency conditions. The Japanese Government
11 thought it had the same right which had been exercised
12 since time immemorial to protect its nationals and
13 their legitimate property interests. Such a principle
14 has been recognized in international law for many
15 generations. History is replete with many examples.
16 The dispatch of troops under the circumstances existing
17 in North China in late July 1937 does not constitute
18 an aggressive act in international law.

19
20 47. In July 1937, HIROTA assembled the
21 directors in the Foreign, War and Navy offices to study
22 a plan with respect to terms of truce with China; the
23 plan was finally approved on August 7, 1937 by the
24 ministers of those three departments, was approved
25 also by KONOYE, the Premier, and forwarded to the
95. Exhibit 260 (Tr. 3486).

Japanese authorities in China. These truce terms were
1 worked out with the firm intention of "taking one big
2 stride toward the improvement of Sino-Japanese relations
3 with the incident as the turning point." With respect
4 to these terms the Foreign Minister stated "The broad-
5 minded policy of our government will probably be beyond
6 the expectation of the Chinese themselves and is worthy
7 of winning the respect of the whole world for the fair
8 and disinterested attitude of our Empire."⁹⁷ The truce
9 terms aimed mainly at the establishment of a non-armed
10 zone from which both Chinese and Japanese forces would
11 be evacuated; they contained no territorial demand,
12 no demand for reparation or indemnities, and otherwise
13 contained nothing to which nations with peaceful incli-
14 nations could take exception.⁹⁸ The terms also took
15 into account and respected the previous conditions of
16 China over a long period of time in order to render it
17 easy for China in view of its internal situation to
18 accept the terms; that is to say, the Japanese Govern-
19 ment offered to undertake, so far as it could, the
20 dissolution of the eastern Hopei regime and to assist
21 in placing that regime under the administration of the
22 Nanking Government;⁹⁹ the provision with respect to
23
24

25 96. Ex. 3260, Clause 11 (Tr. 29,682).

97. Ex. 3280 (Tr. 29,935).

98. Ex. 3280-A (Tr. 29,935).

99. Ex. 3280-A, para. b-3 (Tr. 29,935).

1 the eastern Hopei regime, the most conciliatory 100
2 feature, was decided in spite of army opposition.

3 In addition to the truce terms, the "Outline of the
4 Plan for Over-all Adjustment of Sino-Japanese Rela-
5 tions," which included political and economic issues,
6 was transmitted by wire to the Japanese Ambassador in
7 China; but here it is of paramount importance for
8 the Tribunal to notice that this plan for over-all
9 adjustment of relations was to be handled independently
10 of the truce, which the Japanese so eagerly sought.

11 This decision of the Japanese Government and the fact
12 that the government never entertained the idea of
13 continuing the fighting until an over-all adjustment
14 of relations was agreed upon by the Chinese is set
15 forth in clear and unambiguous language in the instruc-
16 tion of the Foreign Office to the Ambassador. 101

17 In that instruction it was stated, among other things,
18 "It would be most desirable to carry it (over-all
19 adjustment of relations) on side by side with the
20 truce parley, if there is a prospect of quick agreement,
21 however, it is extremely undesirable that the truce
22 parley should be delayed on account of the negotiation
23 for the adjustment of Sino-Japanese relations, causing
24 unexpected complications and setting all to naught.
25

100. Exhibit 3280-A, para. 3 (Tr. 29,935).

101. Exhibit 3280-B-4 (Tr. 29,942).

1 You are requested to bear this point particularly in
2 mind." This shows that the settlement of political
3 and economic issues was not a prerequisite to the
4 negotiation of a truce; and also shows that Japan did
5 not press any unjust political demand on China by
6 taking advantage of the conflict. No one would doubt
7 that the plan for truce and the plan for over-all
8 adjustment of Sino-Japanese relations, if the opportunity
9 arose and could be quickly realized, were under
10 the prevailing circumstances extraordinarily conciliatory.
11 The difficulty of HIROTA, as Foreign
12 Minister, in working out that kind of a program against
13 strong views entertained within the army can be gauged
14 by the fact that only a few leaders in the army were
15 informed of the terms.¹⁰² Here it will be noted that
16 the proposal for over-all adjustment contained a clause
17 relative to Manchoukuo as one of the political issues
18 outstanding; however, the plan did not involve any
19 demand that China should "recognize" Manchoukuo; and
20 following the lines of the Wan-ARITA talk of April 18,
21 1934, and of the HIROTA "Three Principles,"¹⁰³ the plan
22 merely proposed to China "to make a tacit promise not
23 to make an issue of Manchoukuo henceforth."
24

25 102. Ex. 3280-D (Tr. 29,935).

103. Ex. 3243 (Tr. 29,569), Ex. 3254 (Tr. 29,625).

48. Immediately after the Marco Polo Bridge
1 Incident broke out, Foreign Minister HIROTA sent
2 several instructions to Consul-General OKAMOTO at
3 Shanghai to the effect that "The Government is main-
4 taining the policy of local solution and of non-
5 enlargement of this incident to Shanghai." This derived
6 from the fear that the trouble would spread to other
7 parts of China, especially to the Shanghai district,
8 the economic center in Central China, where there were
9 large numbers of Japanese and foreign residents and
10 heavy Japanese and foreign investments. ¹⁰⁴ Despite
11 the strenuous efforts exerted by Consul-General OKAMOTO,
12 the situation in Shanghai grew rapidly worse toward
13 the beginning of August 1937. About August 9, 1937
14 Lieutenant OYAMA was murdered by the Chinese and that
15 incident intensified the feeling on both sides in
16 Shanghai; the Chinese Army had already moved into the
17 non-military zone established by the cease-fire agree-
18 ment which settled the Shanghai Incident of 1932; and
19 altogether the situation grew so tense that by Aug-
20 ust 11, 1937 Chinese troops began heavy firing into
21 the Japanese settlement of Shanghai which in turn
22 precipitated a violent clash between the forces. This
23 was a two-fold disaster: first, because the issue which
24
25 104. Ex. 2515 (Tr. 21,145) and Tr. 29,931.

started with a local clash in North China suddenly

turned into large-scale hostilities between the two
1 nations; and second, the increased antipathy between
2 the two nations made it more difficult to work out a
3 peaceful solution. All this transpired notwithstanding
4 the fact that neither the Japanese Army nor population
5 at home had the slightest enthusiasm about engaging
6 the Chinese in armed conflict. The situation was aptly
7 described by Ambassador Grew in his diary wherein he
8 stated that the Japanese had no "stomach" for a war
9 with China but would bear the inevitable if necessary. 105

10 The outbreak of the Shanghai Incident made it impossible
11 for Ambassador KAWAGOE and Kao Tsun-Wu, Director of
12 the Asiatic Bureau of the Chinese Foreign Office, to
13 work out a peaceful settlement on the basis of the
14 program decided by the cabinet at the beginning of
15 August 1937.
16

17 Foreign Minister HIROTA, not being satisfied
18 with the official negotiations, called upon outside
19 help to assist in working out peace with China and he
20 sought men who had influence in China with influential
21 Chinese to assist in that direction. To that end
22

23 105. See Grew Diary, p. 214: "There is no discernible
24 enthusiasm among the Japanese Government or people for
25 war." See also Sir Robert Craigie's Behind the Japanese Mask, p. 50: "Apart from the army there was little
enthusiasm in Japan for this 'incident' which was
assuming such large proportion."

1 he dispatched Mr. FUNATSU, an ex-diplomat, businessman
2 and outstanding authority on China, to Shanghai in
3 August 1937¹⁰⁶ in order to conduct peace negotiations
4 in secrecy with Kao Tsun-Wu.¹⁰⁷

5 THE PRESIDENT: Mr. Yamaoka, I notice you
6 refer to the diary of Mr. Grew, but you do not mention
7 exhibit numbers. Does that mean that you refer to
8 something that is not in evidence? The same applies
9 to Sir Robert Craigie's diary. However, we are going
10 to disregard everything not in evidence; so you are
11 only wasting time reading it, if you are reading
12 material not in evidence.

13 Proceed to read, Mr. Yamaoka.

14 MR. YAMAOKA: I will state, if your Honors
15 please, that the reference footnote 105 is not in
16 evidence.

17 The peace terms necessary to discharge his
18 mission were also plainly set forth and contained no
19 indication whatever of an aggressive intention toward
20 China.¹⁰⁸ The details of this arrangement are also
21 set forth in the testimony of OKAMOTO.¹⁰⁹ In addition,
22 HIROTA dispatched former Foreign Minister ARITA, one
23 of his reliable friends, to China for the purpose of

24 106. Ex. 3275 (Tr. 29,916).

25 107. Ex. 3276 (Tr. 29,916).

108. Ex. 3277 (Tr. 29,921).

109. Ex. 3274 (Tr. 29,916).

1 having talks with some of the leaders in China for the
2 establishment of a truce. Here again the idea was the
3 working out of a truce, not the working out of an over-
4 all political adjustment, unless it could be rapidly
5 accomplished with the full concurrence of the Chinese.
6 Nothing in connection with the dispatch of those
7 emissaries for peace even intimates that China would
8 be required to "recognize" Manchoukuo as a prerequisite
9 to peace. While ARITA went to North China, his mission
10 was frustrated by the outbreak of the Shanghai fighting
11 and he was compelled to return home. ¹¹⁰ These efforts
12 for peace on both an official and unofficial plane
13 on the part of the Japanese were set at naught by the
14 objective circumstances which arose from the widespread
15 fighting. No fair-minded person can suggest that
16 HIROTA omitted any practical measures in those days
17 which offered any prospect of realizing peace. The
18 concrete steps taken by Japanese diplomatic authorities
19 in China both before and after the outbreak of the
20 Shanghai conflict are comprehensively described in
21 the affidavits of OKAMOTO ¹¹¹ and HIDAKA. ¹¹² That testi-
22 mony also shows that the Japanese diplomatic authorities
23

24 110. Affidavit of HORINOUCI, para. 13 (Tr. 29,694).

111. Ex. 2515 (Tr. 21,145).

25 112. Ex. 3273 (Tr. 29,901).

1 during all the negotiations to effect a truce kept
2 close relations with the representatives of Britain,
3 America, Germany, Italy and France, all of whom were
4 making efforts to save the situation. The cabinet
5 decision of reinforce the Japanese garrison in Shanghai
6 in those tense days was not in the least inconsistent
7 with the effort of HIROTA to work out peace with the
8 Chinese.¹¹³

9 49. As previously described, negotiations
10 between the two nations became more and more difficult
11 by reason of the spreading conflict and aggravated
12 situation. On the other hand, public opinion in Japan,
13 as well as opinion in military circles, gradually
14 stiffened toward the Chinese and the view came to be
15 held in military circles that it would not tolerate
16 third power interference or official mediation in the
17 issue; that is to say, the opinion came to be held in
18 military circles in those days that nothing short of
19 a direct settlement with the Chinese would serve any
20 useful purpose; and thereby the Foreign Minister was
21 placed in an extremely delicate position in pursuing
22 methods for peace. In these circumstances, HIROTA,
23 after having consulted KONOYE, the Premier, and the
24 Ministers of War and Navy, decided to ask the good
25 113. Tr. 29,764 et. seq.

1 offices of third powers in order to bring about a truce
2 and, if possible, an over-all adjustment of relations.
3 To this end, HIROTA accented the previously-offered
4 good offices of the British Ambassador, Sir Robert
5 Craigie, to extend to China the Japanese terms decided
6 in early August 1937.¹¹⁴ HIROTA also informed frankly
7 United States Ambassador Grew on 1 September of the
8 peace terms which the Japanese Government had proposed
9 to the Chinese Ambassador.¹¹⁵

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25 114. Testimony of HORINOUCI (Tr. 29,766-70).
115. Ex. 3716-B (Tr. 37,005).

1 50. About September 25, 1937, the Japanese
2 Government stated that it could not accept the re-
3 quest of the League of Nations for participation in
4 the committee of inquiry. It was perfectly obvious.
5 that the Foreign Minister, as one member of the
6 government, could not give his consent to the request
7 because Japan, having already withdrawn from the
8 League, had been holding firmly to a policy not to
9 take part in any political undertakings of the League.
10 In October and November of 1937 Japan received an
11 invitation to the Brussels Conference from the
12 Belgium Government, which it was obliged to decline
13 because of the internal circumstances within Japan
14 and the Foreign Office construction of the Nine-Power
15 Pact. HIROTA declined the invitation only after
16 having consulted various important persons with
17 respect to the problem of Japan's participation in
18 the Brussels Conference and he stated openly that
19 there was scarcely any objection among the leaders
20 of the political parties about refusing the invita-
21 tion.^{116.} In the light of the actual situation among
22 Japanese people generally, there was strong opposition
23 attending the Brussels Conference because of the
24 deeply entrenched view that the invitation was a
25

1 virtual extension of the League's political maneuvers.
2 In other words, it was virtually a unanimous public
3 opinion that Japan should not attend the Brussels
4 Conference because it was widely felt that its decision
5 had already been cut and dried. Consider also that
6 the invitation arose under the Nine-Power Pact and
7 was extended under Article 7 of that Pact which the
8 Japanese Foreign Office construed, on the basis of
9 the views expressed at the conference, as merely
10 requiring communication through normal diplomatic
11 channels and not as requiring attendance at a formal
12 conference.^{117.} Therefore, there is nothing in con-
13 nection with the declination of the invitation to the
14 Brussels Conference which in any way shows an inten-
15 tion on the part of Mr. HIROTA to neglect or evade
16 the duties of Japan under international treaties.
17 Moreover, it is just a matter of plain common sense
18 that HIROTA could not overrule what was practically
19 unanimous Japanese opinion at every level against
20 participation.
21

22 51. In further efforts to work out peace
23 with the Chinese, HIROTA continuously from early
24 September 1937 through January 14, 1938 held frequent
25 conferences with the Ambassadors of the United States

117. Affidavit of HORINOUCI, para.15 (T. 29696).

1 Britain, China, Italy and Germany looking toward the
2 effective use of good offices. In this connection it
3 must be borne in mind that during the whole period
4 (July 7, 1937 until at least the end of December 1937)
5 the Chinese Ambassador remained in Tokyo and during
6 these five months, in so far as the record shows,
7 never offered one constructive idea toward a truce or
8 readjustment of Sino-Japanese relations, and above
9 all never once suggested a direct meeting between
10 Chinese and Japanese delegates for a frank discussion;
11 and during the same period not one single constructive
12 idea emanated from the Chinese Foreign Office toward
13 peace. Expressed otherwise, all the initiative toward
14 peace came from the Japanese side. In September 1937
15 HIROTA had a candid conversation with Ambassador Grew
16 with respect to the actual demands of Japan for a
17 fundamental rapprochement, which is recorded in the
18 affidavit of Ambassador Grew; ^{118.} there Japan wanted to
19 effect a truce and with respect to terms for a perma-
20 nent rapprochement merely asked for economic coopera-
21 tion, not preference; cooperation against Communism;
22 suppression of anti-Japanism; and pointed out above
23 all that China would not be required to "recognize"
24 Manchoukuo but Japan did ask that China grant something
25 118. Exhibit 3716-B (T. 37005).

1 like a de facto recognition of the existence of Man-
2 choukuo as a legal unity. In the face of the reali-
3 ties of the situation and the long lapse of time, no
4 fair-minded person could find any fault with those
5 proposals of HIROTA; and indeed the American Ambassa-
6 dor today finds no fault with them because he has
7 been willing to come forward out of a long-standing
8 friendship and admiration for HIROTA to point out
9 the true facts in connection with the position of
10 the Japanese Government in those days. So the argument
11 of the prosecution is without any basis when they say
12 that Japan was not willing to stop fighting save and
13 except on condition that China would "recognize"
14 Manchoukuo. The United States was unwilling to use
15 its good offices unless requested by both sides; so
16 the friendly cooperation extended by Ambassador Grew
17 came to naught after all because the Chinese showed
18 no interest. However, that may be, it is certain
19 that Ambassador Grew told the Chinese what were the
20 real intentions of the Japanese. In October 1937
21 Ambassador Craigie, who was an exceedingly industrious
22 and friendly man, offered the good offices of Britain
23 which HIROTA immediately accepted. He offered
24 Ambassador Craigie a proposal of peace on his own
25 initiative and proposed a fundamental rapprochement

1 on the basis of the plan decided early in August of
2 1937, before the fighting had ever spread to the
3 Shanghai area. As Ambassador Craigie gave his con-
4 sent to the proposal and saw nothing in those terms
5 which was repugnant to the British sense of respecta-
6 bility and decency in international dealings, he
7 conducted negotiations which extended over the next
8 two months, but those negotiations proved fruitless
9 in the end because of an objection raised by the army
10 with respect to the intervention of Britain in the
11 matter. ^{119.} It will be recalled here that there was
12 a strong anti-British feeling prevailing in Japan in
13 the early part of November 1937; and in fairness it
14 ought to be said that the attitude of the army might
15 have been a reflection of the public feeling. At this
16 point also consider HIROTA's summons to the indus-
17 trialists in Japan in November 1937 where at a tea
18 party he successfully sought their cooperation to
19 suppress the anti-Britain wave then prevailing in
20 Japan and pointed out that Britain was the only
21 "bridge" through which Japan could hope to work out
22 peace with China in the conditions of those days. ^{120.}
23 Of course, this anti-Britain wave in Japan derived from
24 119. Affidavit of HORINOUCI, para. 16(T. 29699).
25 120. Exhibit 3784-A (T. 37695).

1 the joint declaration of the powers arising out of
2 the Brussels Conference that the powers would take
3 "united action" or something analagous to it against
4 Japan which in turn was played up by the Japanese
5 press.

6 Exhibit 3268 deals with this question and
7 contains two documents. ^{.121} The first one is connected
8 with the point of view of the War Ministry regarding
9 the attitude to be taken by Japan as to the mediation
10 or intervention in the China Affair by third powers
11 or the League of Nations. It should, however, be
12 remarked that, in view of the fact that the army had
13 a strong voice in everything regarding the settlement
14 of the China Affair, the point of view as expressed
15 in the present document would have had important
16 bearings on the attitude of the Japanese Government
17 vis-a-vis the question.

18 The second document is the decision by the
19 War, Navy and Foreign Ministries on the same subject,
20 taken on October 22, 1937. No doubt this decision
21 was influenced to a large extent by the view of the
22 War Ministry as expressed in the previously mentioned
23 document. However, it can clearly be perceived, if
24 we read between the lines of the present decision,
25 121. Exhibit 3268 (T. 37236).

1 that the good offices of any third power, including
2 the United States and Britain, were never rejected,
3 but even welcomed. Although it was stated in the
4 present decision that a "hasty intervention" could
5 not be accepted and that good offices would be ac-
6 cepted only when the aims of the military operations
7 were nearly achieved, it should be pointed out that
8 informal negotiations with third powers with a view
9 to bringing peaceful settlement on the China Affair
10 were actually in progress at that time. It is true
11 that Mr. HIROTA, as a cabinet member, could not accept
12 the invitation to the Brussels Conference in defiance
13 of the categorical opposition on the part of the army,
14 the navy and even of the political parties, but his
15 effort for the peaceful solution of the China Affair
16 through negotiations with third powers were in no way
17 retarded by the present decision of the three minis-
18 tries. Mr. HIROTA as Foreign Minister approved of
19 this decision which was written in such phraseology
20 as would save the face of the army, because he did
21 not regard it as an obstacle to the execution of his
22 policy of amicable settlement of the affair. Various
23 evidences show, at least, that he put such interpre-
24 tation on the decision and pursued his effort in the
25 same direction as ever.

1 THE PRESIDENT: We will stop at this point.
2 We will adjourn until half-past nine tomorrow morning.

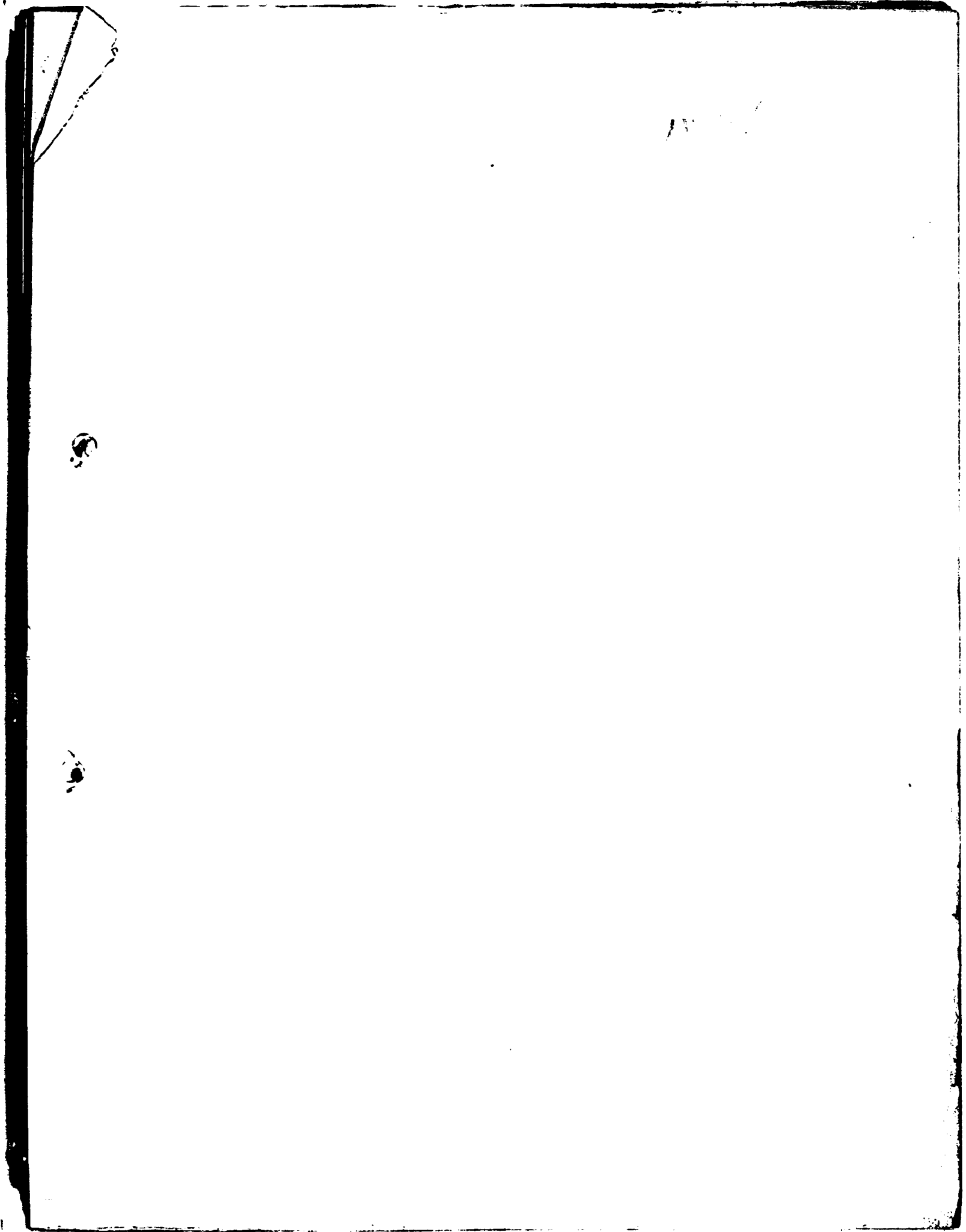
3 (Whereupon, at 1600, an adjournment
4 was taken until Thursday, 18 March 1948, at
5 0930.)

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18 MARCH 1948

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1 Thursday, 18 March 1948

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE B. V. A. ROLING,
14 Member from the Kingdom of the Netherlands, not sitting
15 from 1500 to 1600.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI and UMEZU, who are represented by
5 counsel. The Sugamo Prison surgeon certifies that
6 they are ill and unable to attend the trial today.
7 The certificate will be recorded and filed.

8 Mr. Yamakata.

9 MR. YAMAKATA: May it please the Tribunal,
10 I shall continue from page 112, paragraph 52:

11 52. On October 1, 1937, at a time when
12 fierce battles were raging over a large area of
13 China, the War, Navy and Foreign Ministers reached
14 a decision on the "Outline Regarding the Settlement
15 of the China Affair."¹²² That decision was approved
16 by KONOYE, the Premier. At the time the decision was
17 reached there was a strong feeling aroused among the
18 Japanese Army and other officials against China and
19 there was a general opinion that the previously
20 offered terms of peace to China were not suitable
21 for the situation then existing. The decision with
22 respect to terms on October 1, 1937 in outline re-
23 confirmed the plan adopted in early August 1937 and
24 merely added new proposals such as formal recognition
25 122. Ex. 3262, Tr. 29771.

1 of Manchukuo and reparations; in principle it stated
2 that "Japan aims at establishing a truly bright and
3 lasting friendship between Japan and China";¹²³ that
4 "in employing military and diplomatic measures and
5 other necessary steps involved in this operation,
6 utmost care should be exercised not to overstep the
7 limits fixed by international law" (General Provision
8 4); that North China should be under the control of
9 the Chinese Central Government (Criterion 3); that
10 "measures to be taken in regard to the rear operation
11 zones in North China will shake off the idea of its
12 being occupied enemy territory," and "no administra-
13 tion will be conducted in the occupied territory,"
14 and "the administrative organ will be left to inde-
15 pendent organization by the natives" (Criterion 5);
16 and that with regard to third powers "diplomatic
17 policies be executed so as not to brew a conflict
18 with them or invite their interference" (Criterion 7).
19 The October 1, 1937 decision, when read in its en-
20 tirety, shows that the Hopei-Chahar and Eastern Hopei
21 regimes were to be dissolved and that those areas
22 should be subject to free administration by the
23 Nanking Government; and otherwise there is nothing
24 contained anywhere in the decision which shows an
25 123. Ex. 3262, General Provision 1, Tr. 29772.

aggressive or even excessive attitude toward China.

1 The provision with respect to "recognition" of
2 Manchukuo did not reflect an unalterable decision
3 of the Government but was merely a statement of
4 what the Japanese would propose in the event a suit-
5 able opportunity for fundamental rapprochement in
6 Sino-Japanese relations arose. Of course, it goes
7 without saying that the whole decision was nothing
8 more than a statement of criteria in the event an
9 overall ultimate settlement of the relations between
10 the two countries which could have been and probably
11 would have been compromised had an opportunity for
12 peace discussion with China been presented. The
13 October 1, 1937 decision also contained statements
14 with respect to reparations, the formation of a
15 Sino-Japanese joint syndicate, etc., which were to
16 be taken up in any such final negotiations; however,
17 it must be noticed that all these criteria were
18 never actually presented to China since the oppor-
19 tunity never occurred. This decision therefore for
20 the most part remained in limbo as an unexecuted
21 statement of Japanese policy.

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24 53. All through November 1937 there were
25 frequent discussions between the Foreign Minister and
the British, American and German Ambassadors, all of

whom were endeavoring to find some solution and
1 settlement. Here it is also important to notice
2 that HIROTA was apparently having his troubles in
3 ascertaining the attitude and point of view of the
4 Army with respect to settlement in China. For
5 example, one uncontradicted piece of evidence shows
6 that HIROTA did not get along very well with the
7 Army and ascertained the Army point of view through
8 the Navy Minister, and that the Army regarded the
9 Foreign Minister as being "weak"; and that one
10 influential member of the General Staff, KAGESA,
11 had said that HIROTA should be "killed or apprehended"
12 for having made known to the Chinese too soon the
13 real attitude of Japan toward peace.¹²⁴

14 54. Because of the Army's point of view
15 with respect to using Germany as intermediary,
16 HIROTA was forced into the position that any effort
17 on the part of either Britain or the United States
18 to mediate a settlement would not bring about any
19 satisfactory result. In that situation the Army
20 proposed to request the good offices of Germany but
21 the Foreign Minister was doubtful that the services
22 of that country alone would be effective. At the
23 beginning of December 1937 the German Ambassador
24
25 124. Ex. 3876, Tr. 38669.

1 formally offered to act as intermediary. When
2 Ambassador Craigie was informed of the German pro-
3 posal he called on HIROTA and expressed the opinion
4 that Germany alone would never be able to move
5 Chiang's mind and suggested that it would be more
6 desirable to have Britain and the United States
7 engage in joint efforts, and HIROTA, being of the
8 same opinion, replied that if there was no objection
9 on the part of Germany, Japan would wish Britain and
10 the United States to join. HIROTA, however, asked
11 Ambassador Craigie about sounding out directly the
12 intention of the German Ambassador. Having done
13 this Ambassador Craigie told HIROTA that the German
14 Government had an intention to act alone in the
15 matter because it was merely a tentative mediation.¹²⁵
16 In this situation nothing was left to HIROTA but to
17 accept German mediation alone. In connection with
18 the preference of the Army for German mediation, it
19 ought to be noticed that there is some evidence in
20 the record that the Supreme Command had been sounding
21 out the Chinese on settlement through Ott, the German
22 military attache, without consulting HIROTA about
23 that step.¹²⁶ If true, this activity on the part of
24 the Army affords another example of "double
25

125. Ex. 3260, Sec. 17, Tr. 29700.

126. Ex. 3788-A, Tr. 37709.

1 diplomacy" in Japan against which HIROTA always
2 raised his voice while he occupied high office.

3 55. Consider also that on November 16,
4 1937 HIROTA had a frank talk with Grew¹²⁷ and HIROTA
5 expressed full enthusiasm and sincerity for peace
6 negotiations through the efforts of third powers;
7 HIROTA stated that if peace could be brought about
8 at that time Japan would impose no unreasonable con-
9 ditions and would not keep a foot of Chinese terri-
10 tory, but that if the hostilities were protracted
11 and the casualties continued to increase, this mild
12 attitude of the Japanese Government might undergo
13 a change with the result that peace conditions might
14 become more severe; and that he (HIROTA) desired
15 that the United States would persuade Chiang Kai-shok
16 to open peace negotiations with Japan; he further
17 declared on that occasion that he was prepared to
18 send a representative to Shanghai to talk with a
19 representative of China. That conversation occurred
20 just about the time HIROTA learned that the Army
21 planned to drive on to Nanking and what HIROTA foresaw
22 and had in mind was that in the event the Chinese
23 Government withdrew from Nanking it would be that
24 much more difficult to continue peace negotiations.
25

127. Ex. 3284, Tr. 29956.

1 The fall of Nanking on December 13, 1937
2 changed the complexion of this whole affair in
3 Japan because the Japanese people and the Army in
4 general came to entertain an opinion that the Chiang
5 regime, which had lost the capital, was then reduced
6 to nothing more than a local regime. In that situa-
7 tion the Foreign Minister found it extraordinarily
8 difficult to foster peace negotiations on the previous
9 terms and he also faced strong opposition within the
10 Army and out about conducting future negotiations
11 with Chiang. It must be remembered that with the
12 fall of Nanking Japan had occupied a vast area within
13 China and had at least 200,000,000 Chinese back of
14 its front lines. Throughout December 1937 and up to
15 January 14, 1938, HIROTA conducted peace negotiations
16 through the good offices of Germany, but on a new
17 basis. New terms for peace were deliberated upon by
18 the authorities concerned; HIROTA desired that the
19 decision not go beyond the limits of the former plan
20 stated on October 1, 1937, despite the changed at-
21 mosphere prevailing in Japan after the fall of
22 Nanking; Home Minister SUETSUGU, who was newly per-
23 mitted to attend this liaison conference appeared
24 and expressed strong views with respect to the atti-
25 tude which should be taken by Japan toward China;

1 after much heated discussion, new terms were decided
2 upon,¹²⁸ which turned out to be somewhat stronger
3 than the previous terms, although HIROTA had been
4 talking to Ambassador Dirksen on the assumption that
5 the terms previously decided on October 1, 1937 would
6 be acceptable to all sides in the Japanese Government.
7 On December 24, 1937 the "Outline Regarding the
8 Settlement of the China Incident" was decided.¹²⁹

9 This Outline was drafted on the basis that "If the
10 Nanking Government will reconsider, we shall strive
11 with her to save the situation," but "to be prepared
12 for the time when the Government does not show the
13 slightest sign of reconsideration"; and that "Japan's
14 occupational area has become extensive, making it
15 necessary to immediately carry out its management."
16 Thus, the decision of December 24, 1937 had in view
17 the economic problems which confronted Japan within
18 the occupied area in China in the event a speedy
19 settlement could not be effectuated; and those deci-
20 sions were not reached with any idea of conquering
21 or dominating Chinese territory but for the purpose
22 of administering to the welfare of the people in
23 localities which were out of reach of Chiang's
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25 128. Affidavit of HORINOUCHEI, par. 18, Ex. 3260,
Tr. 29701.

129. Ex. 3263, Tr. 29815.

1 Government and, consequently, were thrown into the
2 lap of the Japanese Army. For example, although the
3 decision set forth outlined plans to establish a new
4 regime in North China (paragraph 1), it contained
5 the following provision: "In case the negotiation
6 with the Central Government is concluded, this new
7 regime shall be adjusted according to the peace con-
8 ditions." The affidavit of HORINOUCHI, paragraphs
9 18-19,¹³⁰ and his testimony¹³¹ show that the peace
10 terms presented to Ambassador Dirksen consisted in
11 the main of four articles; that on December 22, 1937,
12 HIROTA offered them in the form of a memorandum to
13 the German Ambassador and in connection therewith
14 made a detailed oral explanation; and that on Decem-
15 ber 26, 1937 they were conveyed to the Chinese
16 Government at Hankow through Trautman, German
17 Ambassador to China. There is no evidence in the
18 decision with respect to those peace terms that the
19 General Staff made any request to modify them, which
20 seems to be the contention of the prosecution; even
21 if such an intention had been stated by some of the
22 members of the Army High Command, it must have been
23 after the terms had actually been agreed upon.¹³²
24

25 130. Ex. 3260, Tr. 29682.
131. Tr. 29810.
132. Ex. 3265, Tr. 29855.

1 On the contrary, at the Cabinet conference on
2 December 17, 1937, War Minister SUGIYAMA, in reply
3 to a question from Education Minister KIDO, stated
4 that the Army had no intention of making further con-
5 cessions to China, that the terms were the minimum
6 terms, and in case China should refuse to accept them,
7 there would be no alternative but to continue mili-
8 tary action.¹³³ That position of the War Minister
9 was actually regarded as reflecting the opinion of
10 the entire Army. According to the testimony of KIDO,
11 the Home Minister SUETSUGU personally drafted the
12 peace terms expressed in the four general terms.¹³⁴
13 Moreover, it must be remembered here that even before
14 that decision there had been indignation within the
15 Army about the alleged "weak attitude" of HIROTA in
16 the negotiations through German mediation.¹³⁵
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23 133. Affidavit of KIDO, par. 79, Tr. 30835.
24 134. Affidavit of KIDO, par. 80, Tr. 30835.
25 135. Testimony of MORINOCHI, Tr. 29802;
Ex. 3876, Tr. 38671-73.

1 56. When the proposal for settlement was
2 made through the German Ambassador, Japan requested
3 China to reply by the end of December 1937. The reply
4 of China requested that Japan's terms be made more
5 clear. Accordingly, HIROTA orally had the German
6 Ambassador take down in great detail a full explana-
7 tion of the terms and these were communicated to China.
8 To this the Chinese authorities sent to Japan through
9 the German Ambassador a demand that the small details
10 be put in writing, but the Foreign Minister was not
11 in a position to comply. The decision of the Cabinet
12 was that HIROTA should explain orally to the German
13 Ambassador the details of the four simple terms which
14 themselves were in writing. Furthermore, as the Chinese
15 had never expressed any intention to have direct nego-
16 tiations with Japan for settlement, HIROTA, like all
17 prudent diplomats, was not willing to spell out things
18 to the last minute detail at that incipient stage in
19 the talks, and he knew that if all the minute details
20 were put in writing to the Chinese that the terms
21 would prove fixed in every respect and render the later
22 compromise all the more difficult. In the excitement
23 and tenseness of those days there was great apprehen-
24 sion that the leakage of a Japanese proposal for settle-
25 ment might stir up a revolt among the extremists.

1 On January 13, 1938, the Chinese at last
2 sent a reply to Ambassador Trautman, which was trans-
3 mitted to Japan on January 14, 1938. That reply was
4 extraordinarily vague and merely contained another
5 demand for further detailed explanation regarding terms.
6 Exhibits 486-A-1¹³⁶ show the telegrams and reports
7 which were exchanged between Dirksen, Trautman and the
8 Foreign Office at Berlin with regard to Sino-Japanese
9 peace negotiations through the mediation of Germany.
10 As other related telegrams in this series could not
11 be found and no secondary evidence was available,
12 those documents are not complete and a few points are
13 left unclear. Those documents also contain views
14 based upon German misunderstanding, although they do
15 not deliberately distort Japan's real intention and the
16 actual situation at the time. The documents show,
17 however, that HIROTA urged the Chinese authorities to
18 hasten their reply on several occasions. For example,
19 one of the telegrams states that, early in January 1938
20 "The Foreign Minister explained with great seriousness
21 and emphasis that the Japanese Government must now
22 insist upon a quick reply of the Chinese Government."
23 (Telegram dispatched from Tokyo to Berlin on January 5;
24 exhibit 486-D, paragraph 2; tr. 5,989) The telegram
25 136. Tr. 5975.

1 dated January 10, 1938, also shows that, having made
2 clear that the Japanese proposal was not an ultimatum,
3 the Foreign Minister did urge the necessity for a
4 prompt reply by the Chinese. ¹³⁷ In the same telegram
5 the German Ambassador expressed his view on the Jap-
6 anese situation at that time as follows: "The pressure
7 of the Nationalist wing has increased to such an ex-
8 tent that the moderate wing will give in if a positive
9 answer of the Chinese Government does not arrive soon."
10 Surely that warning was communicated through German
11 channels to the Chinese Government. Nevertheless, the
12 Chinese reply, which came after a considerable lapse
13 of time since the original Japanese proposal of the
14 four terms and oral explanations with respect to it
15 had been furnished, merely requested further details,
16 which as previously stated had already been elaborately
17 and thoroughly explained to the Chinese by Trautman.
18 When HIROTA and other Cabinet members saw this last
19 vague attitude on the part of the Chinese, HIROTA
20 and others formed a settled opinion that the Chinese
21 had no sincere desire to open peace negotiations with
22 Japan. One piece of evidence says that HIROTA was
23 "angry" when he saw the last Chinese reply; ¹³⁸ but if
24 he was angry he had ample justification, because he
25

137. Ex. 486-F (tr. 5993)
138. Ex. 486-C (tr. 5987)

had gone through a long period of travail ever since
1 September 1933 in his persistent efforts to bring
2 about a fundamental rapprochement in Sino-Japanese
3 relations on terms which were in no sense aggressive
4 and in no sense infringed upon the sovereignty and
5 territorial integrity of China. The evidence shows
6 that when Trautman was requested by China to communi-
7 cate her reply to Japan, he asked the Chinese Minister
8 emphatically "if this statement was not liable to be
9 considered evasive" and said that "it seemed to me that
10 the wish for an understanding does not find expression
11 in the statement."¹³⁹ The query remains as to whether
12 or not the Chinese Government made any serious study
13 of the proposal for peace. In this connection the
14 confidential report of the German Ambassador at Tokyo
15 to the Foreign Office in Berlin, dated January 26,
16 1938, shows that Chiang Kai-shek evaded discussion of
17 the Japanese terms with the German Ambassador to China
18 and did not indicate a desire to even make a study of
19 those terms seriously, although Germany had gone to
20 the trouble of transmitting the terms and the explana-
21 tion thereof;¹⁴⁰ that report also states: "It will
22 suffice rather to note that China has not seized the
23 second opportunity to begin peace negotiations offered
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139. Hankow telegram of Jan. 13, 1938, Ex. 486-B (tr. 5983)
140. Ex. 486-F (tr. 6001), Ex. 3789-A (tr. 37,723).

to her by Japan from the fact that Marshal Chiang Kai-shek evaded a definite discussion of the Japanese terms with Mr. Trautman and that the Chinese Ministerial Council has not occupied itself in an official session with the Japanese terms and explanations given to them by us. Until within the last few days, it was clearly evident that on the part of the Chinese there was no decision even merely to seriously examine the Japanese terms." The German Ambassador also assured Foreign Minister HIROTA, when he was informed of the Cabinet decision not to continue negotiations with Chiang Kai-shek, that "There is nothing more that could be done under the circumstances," and he proposed by his own initiative to explain it in detail to the other Ambassadors and Ministers. ¹⁴¹ At the time it was also clearly evident that, even before the fall of Nanking, Chiang Kai-shek had already gathered his generals and reached a decision on resistance up to the last against Japan.

57. On January 11, 1938, when the Chinese reply was still not forthcoming, an Imperial conference was held to decide the national policy toward China. A summary note on the consultation among the competent authorities of the ministries concerned leading up to 141. Ex. 3877 (tr. 38,675)

1 the opening of that conference is contained in exhibit
2 3265; ¹⁴² but that note never came to the attention
3 of HIROTA. According to that exhibit an opinion had
4 been expressed among the General Staff that the Jap-
5 anese terms communicated to the German Ambassador in
6 December 1937 were too "aggressive"; but that opinion
7 having become known both the Foreign Ministry and the
8 Navy Ministry considered it highly favorable that the
9 army had come to hold such a broad view with respect
10 to settlement with China, and in these circumstances
11 the Imperial Conference was summoned. However, no one
12 could conclude from the attitude expressed by the Army
13 General Staff in January 1938 about withdrawal of
14 forces from China that the Foreign and Navy Ministers
15 had insisted upon firm terms for China from the begin-
16 ning of the affair. Whatever the cause, it still
17 remains that in January 1938 the General Staff changed
18 from a firm policy toward China to a moderate one, or
19 it might have been that a moderating policy of the
20 General Staff prevailed against a firm policy of the
21 War Ministry. However it originated, it is repeated,
22 that the Foreign Ministry welcomed the change in atti-
23 tude; and in those circumstances the Imperial Conference
24
25 142. Tr. 29,855.

1 was held, as previously stated. The Imperial Conference
2 adopted the fundamental policy for disposition of the
3 China Affair, which, on the one hand, defined the
4 peace terms in case the Chiang regime would agree to
5 the opening of a peace parley, and on the other decided
6 alternatively on the general line of measures to be
7 adopted in case the Chiang regime did not show a dis-
8 position to discuss peace.

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1 The substance of the agreement reached during
2 the Imperial conference was almost the same in pur-
3 port as those contained in the "Outline Regarding
4 the Settlement of the China Affair" dated October 1,
5 1937,¹⁴³ the outline dated December 24, 1937,¹⁴⁴ and
6 the terms for fundamental rapprochement communicated
7 through the mediation of Germany. At the Imperial
8 conference it was fully understood that certain
9 phraseology used in previous outlines of policy was
10 so strong, reflecting nervous public opinion during
11 the changing course of events, that the real inten-
12 tion of the Japanese Government was liable to be
13 misunderstood; hence, the Foreign Minister and also
14 the Army welcomed the opportunity to decide the
15 fundamental policy toward China in an Imperial con-
16 ference. For instance, to take just one example,
17 the previous outlines of policy up until the time
18 of the Imperial conference never stated specifically
19 that the Japanese Government respected the integrity
20 of Chinese sovereignty and territory, although it
21 was implicitly involved in those outlines; and the
22 decision as a result of the Imperial conference
23 expressly stated that fundamental idea toward China

24 143. Exhibit 3262 (Tr. 29,771)

25 144. Exhibit 3263 (Tr. 29,815)

1 in the very preamble of the "Fundamental Policy for
2 Disposition of the China Affair."¹⁴⁵

3 Exhibit 3269,¹⁴⁶ although claimed to be a
4 record of the Foreign Office, bears no signature of
5 Foreign Minister, Vice-Minister or any other high
6 official of that Ministry. It refers to consultation
7 between the War Minister and the Army Commander in
8 China which took place before the Imperial Conference
9 of January 11, 1938. The substance has no bearing
10 upon HIROTA's policy or action. Moreover, it is a
11 record of hearsay information, coming from an un-
12 known source. Even the record itself is accompanied
13 by a written comment that its authenticity is un-
14 certain. In conclusion, this document is irrelevant
15 and immaterial to HIROTA's case.
16

17 58. Following the Imperial conference the
18 last Chinese reply through Germany arrived on
19 January 14, 1938. The reply was given long delibera-
20 tion for many hours at the liaison conference and
21 the cabinet meeting on January 14 and 15, 1937.
22 Those conferences having come to the reluctant con-
23 clusion that Chiang Kai-shek had not shown any sin-
24 cerity or good faith about the restoration of peace,
25

145. Tr. 29,844.
156. Tr. 37,245.

1 a decision issued that "the Japanese Government deals
2 no longer with Chiang Kai-shek." Those conferences
3 were, of course, not dealing merely with the last
4 evidence of Chinese vagueness and insincerity, but
5 had in mind that vast catalogue of discord between
6 Japan and China which had its roots long before the
7 Mukden Incident. It has already been stated in pre-
8 ceding paragraphs why Foreign Minister HIROTA con-
9 cluded from the last Chinese reply that China really
10 had no intention to enter into negotiations for peace
11 or even to accept the Japanese proposals as a start-
12 ing point and basis for discussion. HIROTA, having
13 carried on almost continuous conversations with the
14 Chinese and allied powers looking toward first a truce
15 and alternatively, but not necessarily, a fundamental
16 rapprochement ever since July 9, 1937, finally lost
17 his own temper and went along with the decision of
18 the Government not thereafter to deal with the Chiang
19 Kai-shek regime.

20 Exhibit 3736¹⁴⁷ is telegram No. 145783, dated
21 Hankow 15 January 1938, of Herr Trautmann, the German
22 Ambassador to China. Prosecution exhibit 486-B¹⁴⁸
23 contains exactly the same telegram, although that
24 part of the exhibit was not read when introduced.
25 147. Tr. 37,264 148. Tr. 5,983.

1 This telegram of the German Ambassador stated
2 that Kung of the Executive Yuan had requested him to
3 transmit to the Japanese Government his oral report,
4 expressive of his desire that he might be informed
5 of the nature and contents of the terms proposed by it.
6 Ambassador Trautmann also stated, in the said telegram,
7 his impression that "the Chinese Government might tone
8 down the defect of her answer by this statement."
9 That formal but defective answer of the Chinese
10 Government had been communicated to the German Ambassa-
11 dor on January 13 (Trautmann's telegrams 14578647; the
12 first part of exhibit 486-B), and, through the German
13 channel, to the Japanese Government on January 14
14 (exhibit 486-B). This official answer of the Chinese
15 Government became the subject of serious discussions
16 at the Japanese Cabinet conference, and the reply of
17 the Japanese Government thereto was conveyed by
18 Foreign Minister HIROTA to Herr Dirksen, the then
19 German Ambassador at Tokyo, at 10:30 A.M., January
20 16, 1938.

22 Such being the circumstances, the oral report
23 was made too late to exert any influence upon the
24 Japanese decision, even if it was worthwhile to be
25 taken into consideration. Moreover, we are not even
certain if this report was ever communicated to the

Japanese Government.

1 At any rate, if China's true intention was
2 just what was expressed in this report, we cannot
3 help wondering why they did not state it in the
4 preceding formal reply, and why they made the report
5 two days after the delivery of the said formal reply.
6 It was only natural that the Japanese Government
7 took the preceding reply at its face value, considered
8 that it reflected the true and formal intention of
9 the Chinese Government, and reached the above-
10 mentioned final decision after serious discussion.

11 The Japanese Government had repeatedly de-
12 manded a quick reply of the Chinese side, and the
13 Chinese reply of January 14 was the formal reply long
14 waited for. Bearing this in mind, it was only reason-
15 able that the Foreign Minister as well as other
16 Cabinet members regarded the reply to be expressive
17 of the true intention on the part of the Chinese
18 Government and decided their attitudes in accordance
19 with it. It is, therefore, utterly unreasonable to
20 accuse Japan, on the basis of this evidence, for mis-
21 understanding China's true intention.
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1 Here, again it must be remembered that Chiang
2 Kai-shek was a regime in China, that as far back as
3 1934 HIROTA had been deeply sympathetic with the
4 efforts of Chiang to unite China and establish law
5 and order,¹⁴⁹ and in those days he had no doubt
6 about the sincerity of Chiang in his relations with
7 Japan;¹⁵⁰ and that above all Japan by its early recog-
8 nition of Chiang as the Nationalist Government of
9 China had given his powerful and continuous support
10 in his effort to unify China under his banner. So
11 on January 14, 1938, Nanking having fallen, Chiang
12 being a local government in Hankow the Japanese
13 Government decided not to deal with him any longer;
14 among other things, this was merely a diplomatic
15 maneuver in an effort to restore peace which the
16 Japanese had been looking for all along on non-
17 aggressive terms. However, it was pointed out in the
18 testimony of HORINOUCHI¹⁵¹ that the aforementioned
19 declaration of the Cabinet did not mean the abandon-
20 ment of peace negotiations at all. The previous
21 negotiations carried on over a long period of time
22 while fierce fighting was raging having failed, the

- 24 149. Exhibit 3247 (Tr. 29,591)
25 150. Exhibit 3249 (Tr. 29,608)
151. Affidavit of HORINOUCHI, para. 20, Exhibit 3260
(Tr. 29,704)

1 Cabinet decided on a new approach in an effort to
2 work out peace. As HORINOUCI testified, even after
3 the above statement was issued, HIROTA never ceased
4 to seek an opportunity to realize peace, and the peace
5 which he aimed at and sought, as he expressly declared
6 in the Diet, was the unification of the whole of
7 China by the Chinese people, not regional separation
8 by the hand of the Japanese. ¹⁵² The decision not
9 to deal with Chiang any longer was, of course, a
10 strategic maneuver in order to put an end to the
11 uncertain discussions which had been going on for
12 months and which apparently had been doomed to failure
13 because of the extraordinarily complicated circum-
14 stances from the very beginning. The non-dealing
15 statement of January 16, 1938 did not indicate any
16 intention whatever to shy away from fundamental peace
17 or to expedite any aggressive action on the part of
18 the armed forces. Unfortunately, the opportunity
19 which HIROTA earnestly desired might be forthcoming
20 in internal Chinese affairs did not transpire and
21 the ²situation advanced in the opposite direction.
22 Realizing the failure to accomplish the prime objective
23 which motivated him in accepting high office in Japan,
24 HIROTA expressed his desire in February 1928 to resign
25 152. Exhibit 3288 (Tr. 30,001)

1 and in fact he informed KONOYE, the Premier, of his
2 wish in the presence of the War and Navy Ministers
3 in a room of the Diet Building in February 1938.
4 Notwithstanding the decision not to deal with Chiang,
5 the situation was soon rectified because the evidence
6 shows that HIROTA was in touch with Chiang through
7 an emissary in the spring of 1938, and General UGAKI,
8 who succeeded him as Foreign Minister on May 26,
9 1938, accepted the Foreign Ministership only after a
10 previous understanding with Prince KONOYE that the
11 decision of January 16, 1938 would be reversed and
12 negotiations would be continued with Chiang. ¹⁵³ On
13 January 16, 1938, when the decision not to deal with
14 Chiang was reached, the situation was so complex
15 that one man's opinion was as good as another man's
16 as to what would be an effective step to restore
17 peace between Japan and China. The decision which
18 HIROTA concurred in was based upon an understanding
19 previously reached at an Imperial conference and
20 there is not the slightest evidence anywhere in the
21 record to show that either HIROTA or the other man
22 who participated in the decision of January 16, 1938
23 were moved by other than sincere motives for the
24 establishment of peace.
25

1 Exhibit 3270,¹⁵⁴ entitled "Basic National
2 Policy," is claimed to have been sent from the Premier,
3 Prince KONOYE, to Foreign Minister HIROTA on January
4 21, 1938. It deals with various internal policies on
5 the presumption that the China Affair would last for
6 years to come. In the light of the fact that, at
7 that time, Japan was virtually engaged in a large-
8 scale conflict with China, the battle-front extending
9 over a thousand miles, it is not to be wondered at
10 that the Japanese Government intended to readjust its
11 internal policies, to a certain extent, on a wartime
12 footing. Furthermore, the measures enumerated in
13 the present document are all abstract and vague,
14 susceptible of varied interpretations. People are
15 liable to form an opinion, in view of the series of
16 events which followed the drafting of this exhibit,
17 that the Japanese Government, at that time, had already
18 decided to make preparations for the war which actually
19 followed. But, scrupulous study of the then circum-
20 stances make it clear that it is not proper or just
21 to come to such a hasty conclusion. Even though it
22 turned out that this Basic National Policy was made
23 the most of afterwards by the extremist elements,
24 for the purpose of realizing and enforcing their own
25 154. Exhibit 3270 (Tr. 37,248).

1 views, if this document really emanated from the
2 Premier and was communicated to the Foreign Minister,
3 this does not necessarily imply that the latter had
4 anything to do with the formation or drafting of
5 this policy.

6 The policy is concerned chiefly with internal
7 and military measures, which are outside of the scope
8 of the Foreign Minister's competence. And the mere
9 fact that the document was communicated to the Foreign
10 Minister without any indication as to what effect
11 should be given thereto by the receiver, in no way
12 proves nor suggests the Foreign Minister's collabora-
13 tion in the making or carrying out of the measures
14 therein mentioned. In conclusion, this document
15 throws no light to HIROTA's case.
16

17 Had HIROTA been an aggressive person or a per-
18 son who was participating in a common plan or conspira-
19 cy to dominate or conquer China or any part of that
20 country, it is inconceivable that he would have gone
21 to the great length he did in an effort to work out
22 peace through literally hundreds of conversations
23 with the Chinese Ambassador, the Ambassadors of
24 foreign powers and the members of the Government and
25 Supreme Command. That he failed to attain peace was
~~certainly not for the lack of trying. It is repeated~~

1 once more by way of emphasis that during the whole
2 period from Marco Polo Bridge (July 7, 1937) up until
3 January 16, 1938, when the decision was reached to
4 stop dealing with Chiang, the Chinese never offered
5 a single idea or proposal for a settlement, and that
6 it persistently adopted a vague attitude although
7 the Japanese were going to extraordinary lengths to
8 convince the Chinese of good motive and intention
9 and the fact that Japan had no territorial designs,
10 respected the sovereignty of China and had only the
11 best interests and welfare of its respective peoples
12 at heart. What more could a mortal man do to effectuate
13 peace under those unprecedented conditions?
14 Surely nothing during the long course of the negotia-
15 tions even affords a suspicion that Mr. HIROTA was
16 engaged in any criminal purpose toward China or
17 the Chinese people. If HIROTA was an aggressor
18 at heart, he was indeed a strange person; he did not
19 wish to stay in office to witness the accomplishment
20 of an aggression. He sought to resign in February
21 1938, as previously stated, and would have actually
22 resigned at that time had it not been for the actual
23 tug in politics and the fact that there was a dearth
24 of men available at that time who were regarded as
25 having suitable background and experience to take

1 . over the Foreign Ministry. Nevertheless, he resigned
2 on May 26, 1938, never again to return to any high
3 office in Japan and without the slightest ambition
4 in that direction.

5 SECTION 10

6 THE CHINA AFFAIR AND THIRD POWERS

7 59. During the China Affair there occurred a
8 series of unfortunate accidents which third powers,
9 principally Britain and the United States, claimed
10 did violence to foreign rights and interests in China.
11 Foreign Minister HIROTA received a number of protests
12 in this connection. While third powers filed a large
13 number of protests during the long course of the
14 China Affair, all of which are listed in the summation
15 of the prosecution, relatively few, aside from the
16 behavior of the troops in Nanking, were received
17 during the time HIROTA occupied the Foreign Ministry
18 (July 7, 1937 - May 1938). The uncontradicted evidence
19 shows that HIROTA took all precautions and means within
20 his power to prevent accidents and occurrences of the
21 kind protested by third powers. On the occasions when
22 decisions were reached by the Cabinet on major poli-
23 cies, he succeeded in having written into the policies
24
25

1 provisions directed toward scrupulous observance of
2 the rights and interests of third powers and their
3 nationals. For example, see exhibit 3262,¹⁵⁵ the
4 "Outline Regarding the Settlement of the China
5 Affair," (General Provision 4 and its Criterion 7);
6 and exhibit 3264,¹⁵⁶ "Fundamental Policy for
7 Disposition of the China Affair" (paragraphs 3 and 4).
8 Japanese diplomats in various parts of China were
9 frequently instructed by way of precaution or after-
10 math to take measures for the protection of foreign
11 life and interests even though foreigners, in some
12 instances, persisted in remaining and doing business
13 as usual in the path and line of fire of actual combat.
14 The behavior of the diplomats in Nanking was no
15 exception.¹⁵⁷ Notwithstanding these instructions,
16 which emanated from both the Foreign Minister and the
17 Supreme Command, incidents occurred, some accidental
18 and some disgraceful. As Mr. HIROTA assumes no
19 responsibility for what transpired in Japan after
20 he left the Foreign Office on May 26, 1938, this
21 part of the summation will be directed to complaints
22 received during the China affair up to May 1938. It
23 is settled by the uncontradicted evidence that the
24

25 155. Tr. 29,771

156. Tr. 29,837.

157. Aff. of HIDAKA, para. 5, Ex. 2537, Tr. 21,450.

1 Foreign Minister had no power to direct or supervise
2 military action in the field or otherwise and all he
3 could do under any state of facts was to issue a
4 warning to the Supreme Command and then only through
5 the medium of the War or Navy Minister. During Mr.
6 HIROTA's occupancy of the Foreign Office in the China
7 Affair, the protests received arose out of acts and
8 omissions of the Army in the field in China which was
9 the primary responsibility of the commander in the
10 field and perhaps the ultimate responsibility of the
11 Supreme Command itself. None of the diplomatic
12 representatives of third powers in Tokyo, particularly
13 Ambassadors Grew and Craigie, ever doubted for a
14 single moment the sincerity with which Mr. HIROTA
15 went about the correction, warning, apology and
16 payment of indemnities for injuries and damages
17 inflicted. During Mr. HIROTA's occupancy of the
18 Foreign Office protests of third powers received
19 unprecedentedly prompt attention and satisfaction as
20 is clearly stated in the affidavit of Ambassador
21 Grew.¹⁵⁸ Sir Robert Craigie first came to Tokyo in
22 September 1937 and both he and Ambassador Grew remember
23 HIROTA very kindly to this day because of his attitude
24
25 158. Exhibit 3716 (Tr. 36,998)

1 and manner in disposing of complaints of third
 2 powers about conditions in China arising out of
 3 military activities and programs. Ambassador Craigie
 4 was confronted immediately upon his arrival in
 5 September 1937 with the incident in China involving
 6 the wounding of Ambassador Hugessen, which was
 7 promptly settled through the efforts of Mr. HIROTA
 8 to the satisfaction of the British Government with
 9 the expression by HIROTA, among other things, of
 10 profuse apology; and Britain notified Japan that (

11 the incident was regarded as closed.¹⁵⁹ The bombing
 12 and sinking of the Panay and injury to vessels of the
 13 Standard Oil Company were satisfactorily settled
 14 without delay by the prompt payment of indemnities
 15 and profuse apology by HIROTA.¹⁶⁰ In the case of the
 16 Panay, HIROTA took the unprecedented step of immediate-
 17 ly calling upon Ambassador Grew at the Embassy, which
 18 he regarded as a display of great moral courage during
 19 a time when nationalist sentiments were on the upgrade.
 20 The shelling of the Ladybird and other ships were
 21 treated in the same way; that is to say by an
 22 immediate and profuse apology followed by prompt pay-
 23 ment of full indemnity and the closing of the matter
 24

25 159. Ex. 2519 (Tr. 21,337); Ex. 2520 (Tr. 21,340);
 160. Ex. 2522 (Tr. 21,350); Ex. 3716 (Tr. 36,998);
 Ex. 3285 (Tr. 29,963); Ex. 3716C (Tr. 37,009);
 Ex. 2523 (Tr. 21,353); Ex. 2524 (Tr. 21,358); and
 Ex. 2525 (Tr. 21,360).

161
 1 to the satisfaction of Britain. Thus, incidents
 2 which had the potentiality during days of emotion
 3 to exacerbate good relations between Japan and the
 4 United States and Britain were promptly settled to
 5 the satisfaction of those Governments. It is the
 6 contention of the accused that matters finally
 7 settled in accordance with normal diplomatic pro-
 8 cedure are not subject to re-examination. In other
 9 cases involving violence against life and foreign
 10 property, the Japanese Government showed constant
 11 readiness in taking remedial measures, payment of
 12 indemnity, etc.
 162

13 60. HIROTA took similar precautionary and
 14 warning action about protests involving indiscriminate
 15 air raids in China; but the fact that it was beyond
 16 his power as Foreign Minister to exercise any real
 17 control is graphically illustrated by an entry in
 18 Grew's diary of September 20, 1937,¹⁶³ which reads
 19 as follows: "While recent developments indicate that
 20 HIROTA has made and is making efforts to avoid antagon-
 21 izing the United States by cautioning the military
 22 and naval forces in individual local issues, we must

24 161. Ex. 2527 (Tr. 21,367); Ex. 2528 (Tr. 21,371);
 25 Ex. 3286 (Tr. 29,967); and Ex. 3717 (Tr. 37,016).
 162. Ex. 3282 (Tr. 29,949); Ex. 2531 (Tr. 21,390).
 163. Ex. 3282 (Tr. 29,949).

1 reluctantly face the fact that the civil government
2 in Tokyo has very little influence with these forces
3 where their general objectives are concerned." In
4 the same entry, the Ambassador commented that when
5 he gave a warning bluntly denouncing the Japanese
6 Army's action and stated that "the good will between
7 our countries which he and I had been building up
8 during these past years was rapidly dissolving as
9 a result of Japan's action in China," the Foreign
10 Minister received the Ambassador's observation sadly
11 and more gravely than usual without the least pre-
12 tense at defense. The Grew diary for the same date
13 (September 20, 1937)¹⁶⁴ shows that upon receiving a
14 United States protest against indiscriminate bombing,
15 HIROTA assured Grew that he would bring the matter
16 to the attention of the "highest quarters" and
17 immediately thereafter went to the Palace in that
18 connection.

19 In his interview with Ambassador Grew on
20 November 16, 1937, HIROTA expressed his deep concern
21 with the anti-British and anti-American trend in
22 Japanese journalism and he exerted himself to change
23 the tone of the press in order to maintain good
24

25 164. Exhibit 3281 (Tr. 29,948)

1 relations with third powers although this involved an
2 unusual undertaking on the part of a Foreign minister. ¹⁶⁵

3 61. During all of the time HIROTA held high
4 office he respected the terms of the outstanding
5 treaties and conventions; he never granted any
6 preferential economic privileges to either Germany
7 or Italy; he did not favor infringing the right of
8 Britain, the United States or any other power to do
9 business in China, Manchukuo or Japan, and at all
10 times respected the principle of the "Open Door" and
11 "Equal Opportunity," notwithstanding that China for
12 more than a decade had consistently sought to oust
13 all extraterritorial rights and privileges, annually
14 conducted a day of "national mourning" over its
15 alleged "last rights," etc. In this connection the
16 Tribunal will recall that in the Nine-Power Act
17 of 1922 China gave only limited consent to its pro-
18 visions and did not agree to that portion of the
19 Pact which in the main has been the subject of the
20 prosecution's argument. The prosecution took an
21 excerpt from the Business Report of the Foreign
22 Office ¹⁶⁶ with respect to German and Italian invest-
23 ments in China, but this was no help to the prosecution
24

25 165. Ex. 3284 (Tr. 29,956); Ex. 3716 (Tr. 36,998)
166. Ex. 2228A (Tr. 15,982).

1 in establishing an alleged preference; that document
2 stated that it was not intended to give to either
3 Germany or Italy "the preference which would threaten
4 to cut off entirely the economic participation of
5 Britain and the United States"; and the latter part
6 of that document contains nothing more than suggest-
7 ions concerning the way of handling diplomatic
8 negotiations with Germany. Moreover, the uncontra-
9 dicted evidence shows that neither Germany nor Italy
10 was ever given during HIROTA's days any preference
11 of any kind; and to put this matter beyond the pale
12 of doubt it need only be pointed out that the prose-
13 cution itself proved that Germany had made diplomatic
14 protests to Japan against Japanese interference with
15 German trade and interests in China.¹⁶⁷
16

17 62. The Behavior of the Army at Nanking.
18 In December 1937 and January 1938 the Foreign Ministry
19 received a large number of complaints, in two lots
20 with respect to alleged atrocities committed by the
21 Japanese Army in Nanking.¹⁶⁸ Of course, the Foreign
22 Office had nothing to do with the commission of the
23 alleged atrocities and received the protests after

- 24 167. Ex. 592 (Tr. 6,588); Ex. 594 (Tr. 6,597);
25 Ex. 595 (Tr. 6,603).
168. Ex. 3287 (Tr. 29,969), testimony of ISHII
 (Tr. 29,974 et seq.)

1 the incidents in the main had already taken place.

2 The measures taken by the diplomatic authorities

3 on the spot were fully explained in the testimony

4 of HIDAKA.¹⁶⁹ The Foreign Office accepted the com-

5 plaints at "face value" and, under the order of

6 HIROTA, took immediate steps to file an emphatic

7 protest to the competent Bureau of the War Ministry;

8 it referred those complaints also to the liaison

9 conference between the War and Navy Ministries and

10 the Foreign Office with the result that the military

11 authorities were asked to and agreed to take strict

12 measures to control the behavior of the Army and

13 make appropriate investigations. Moreover, HIROTA

14 gave direct warnings to War Minister SUGIYAMA.¹⁷⁰

15 This procedure was repeatedly taken by the Foreign

16 Office and there is not a line of evidence anywhere

17 in the record to show that the Foreign Office was

18 dilatory or negligent in that regard. Especially, in

19 view of the fact that HIROTA had striven for many

20 years during trying periods to maintain and promote

21 good relations with all third powers, no one could

22 have been more deeply distressed than HIROTA was to

23 hear those complaints about the behavior of the troops

24

25 169. Exhibit 2537 (Tr. 21,444)

170. Exhibit 3287 (Tr. 29,969)

1 in Nanking. Although all the evidence in the record
2 with respect to what the troops actually did in
3 Nanking points to the conclusion that the protests
4 were exaggerated and out of all proportion, still
5 this is all a matter of hindsight; and it is
6 abundantly clear that at the time the Foreign
7 Ministry received those protests it had no substan-
8 tial information one way or the other as to whether
9 they were true, partially true or false. As previ-
10 ously stated, the Foreign Ministry proceeded on the
11 assumption they were true and the temper and activity
12 displayed by HIROTA upon receiving those complaints
13 all point to the fact that he thought there was con-
14 siderable substance to the protests and that this
15 threat to the maintenance of good relations had to
16 be removed at all costs. 171

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25 171. Testimony of ISHII, Ex. 3287 (Tr. 29,969-97).

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1 As previously stated, the Foreign Office was
2 assured that the War Ministry would not demur about
3 taking action on the representations of the Foreign
4 Minister; and as a result of other representations,
5 the Supreme Command in January 1938 dispatched Major-
6 General HOMMA, then Director of a bureau of the
7 General Staff, to the spot in order to make an investi-
8 gation and see to the strict enforcement of military
9 discipline. The fact that HOMMA was in Nanking early
10 in February 1938 for that purpose appears from the
11 affidavit of HIDAKA¹⁷². A telegram dispatched from
12 the American Embassy in Tokyo to the State Department¹⁷³
13 also confirms the fact that the Foreign Office had
14 actually taken steps in order to stop the alleged
15 atrocities and interference with the property of
16 third powers and their nationals. Granting that the
17 alleged atrocities continued over a period of several
18 weeks, and granting further that the warnings issued
19 by the Army to the expeditionary forces were not
20 sufficiently strong and effective, it furnishes no
21 reason to lay that responsibility at the door of HIROTA.
22 As previously stated, he moved promptly and repeatedly
23 upon receipt of those complaints and did all that any
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25 (172. Ex. 2537, Tr. 21,444.
173. Ex. 328, pp. 23024 (Tr. 29,998 et seq.)

1 Foreign Minister could do under the circumstances
2 under the Constitution of Japan. HIROTA had no
3 power to give orders to the Army; he had no power
4 to punish responsible officers in the Army; and all he
5 could do under the circumstances was to issue prompt
6 and emphatic warning to the War Ministry which he
7 did. As testified to by ISHII¹⁷⁴, HIROTA and the
8 Foreign Ministry did everything it had the power to
9 do in the circumstances.

10 63. The prosecution has suggested that
11 HIROTA should have referred the complaints to the
12 Cabinet, but that suggestion is bootless. The Cabinet
13 itself could not have done more than HIROTA had already
14 done and complaints of that kind were not of such a
15 nature that HIROTA could not take effective steps
16 without a Cabinet order. The uncontradicted evidence
17 is that HIROTA personally protested to the War Minister.
18 Consequently, there is nothing in the entire evidence
19 to support Count 45, which deals with the Nanking
20 situation, against HIROTA. The case of Canton
21 mentioned in Count 46, and that of Hankow mentioned
22 in Count 47, all occurred when HIROTA held no official
23 post whatever; and of course, he had no connection
24 with those events.

25 (174. Tr. 29,997)

1 64. Narcotics. Hirota had nothing whatever
2 to do with any alleged policy of weakening the Chinese
3 will to resistance by means of traffic in narcotics,
4 which is mentioned in Section 6, Appendix A, of the
5 Indictment. In the summation of the prosecution, they
6 claim that HIROTA participated in the alleged opium
7 monopoly (Chapter IX; FF-105-108). This extraordinary
8 argument is not based on any evidence. Two Cabinet
9 decisions are cited (FF-106) which were taken, respec-
10 tively, in April 1933 and December 1938. It is ob-
11 vious that HIROTA at those times was not a member of
12 the Cabinet and he had nothing to do with those decisions
13 even assuming for the sake of argument that the decisions
14 are subject to criticism. With regard to the prosecu-
15 tion's submission that "The clear Japanese policy of
16 encouraging the growth and the use of narcotics in all
17 parts of Japanese occupied China," we can only say
18 that there is not a jot of evidence in the case to show
19 that HIROTA or the Foreign Office under his direction
20 participated in such a policy or had any knowledge
21 whatever of any such activity. The prosecution re-
22 ferred to the testimony of three witnesses in its
23 summation, but none of them said anything which even
24 faintly intimates that HIROTA had any connection with
25 the matter. For example the witness Lawless testified

with respect to the control of illicit traffic,
1 chiefly at Peiping, but he referred to the period
2 after July 1938; that is to say after HIROTA's resig-
3 nation for the last time as Foreign Minister in
4 May 1938. The witness Gill, one of the three wit-
5 nesses referred to, testified with respect to the
6 traffic in the Shanghai district but he said he always
7 received helpful cooperation from the Japanese Consul-
8 ate ¹⁷⁵ in suppression activities. It was, of course,
9 well known to the Japanese that millions of Chinese
10 have been addicted to the use of opium and other nar-
11 cotics for many generations, that Chiang Kai-shek had
12 obtained the enactment of drastic laws against dealers
13 and users; but in view of the ugly nature of the habit
14 it is hardly to be supposed that laws substantially
15 cut down the number of addicts or accomplished any-
16 thing more than driving the traffic further underground.
17 It having been demonstrated to the Tribunal through
18 hundreds of pieces of evidence that HIROTA is a man
19 of sterling character, and of high and lofty ideals,
20 it must be abundantly clear that he never had any
21 part in either an affirmative or negative way in any
22 alleged policy to increase the growth and use of opium
23 and other narcotics during his tenure of office or at
24
25 (175. Tr. 4,413 et seq.)

any other time.

1 65. The enlargement of the China Affair was
2 not due to any action taken by HIROTA. The Army
3 exercising its autonomous jurisdiction made inde-
4 pendent decisions in that regard. See the evidence
5 of TOJO¹⁷⁶ wherein he said that the Chief of the
6 General Staff was on an equal footing with the War
7 Minister and not under his command; and the former's
8 views were transmitted to the Cabinet through the War
9 Minister. In addition TOJO referred to the China
10 Affair as follows¹⁷⁷ : "At first, the Government policy
11 in regard to the China Incident was that of localiza-
12 tion. However, due to the fact of the independence
13 of the High Command, the fighting kept spreading as
14 they strove for victory. Premier KONOYE had a terrible
15 time;" and further "The Government policy was a policy
16 of non-enlargement of the Incident; nevertheless,
17 because of the fact that the Civil Government had no
18 authority over the Supreme Command, the fighting was
19 in fact enlarged and the Civil Government was power-
20 less to prevent it."
21

22 66. In that situation the Japanese Govern-
23 ment, like all other governments engaged in modern
24 (176. Ex. 3032, Tr. 27,082.
25 177. Ex. 3033, Tr. 27,085).

1 warfare, was compelled to agree upon various adminis-
2 trative and economic steps and principles in order
3 to deal with the new situation, provide for the wel-
4 fare of the Chinese inhabitants within their lines
5 as well as the security of the occupation itslef.
6 These several measures taken during HIROTA's tenure
7 were exceedingly mild, were plainly stated to be
8 temporary measures growing out of the exigency of war-
9 fare and in no sense implied an effort to conquer or
10 dominate China or that part of it within Japanese
11 lines. Additionally, all the few and simple economic
12 expedients adopted by the Cabinet to meet the realities
13 of warfare were all expressly stated to be subject
14 to readjustment when peace was attained. None of the
15 administrative steps taken during HIROTA's days were
16 aimed at encroaching on the sovereignty of China or
17 exploitation in any sense. The Army had sole admin-
18 istration of the occupied territory. However, in order
19 to coordinate and rationalize administrative policies
20 and to prevent the abuse of administrative powers in
21 the occupied territory, principles based on the
22 actual needs and realities were agreed upon as a
23 result of consultation between the Army and the civil
24 side of the Government.
25

67. There is therefore no substantial

1 evidence to support Count 28; nor evidence to hold
2 HIROTA responsible for the activities of the Army at
3 Nanking; and he of course was not connected in anywise
4 with the treatment of prisoners of war or internees.
5 Consequently, Counts 45, 46, 47, 53, 54 and 55 also
6 fail.

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SECTION 11HIROTA AS THE PRESIDENT OF THE BUREAU OF PLANNING:AND THE FIVE YEAR PLAN

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4 68. HIROTA, as Foreign Minister of the First
5 KONOYE Cabinet, held concurrently, from June 1937 to
6 October 1937 the presidency of the "Bureau of Planning"
7 ("Kikakucho")^{177a} which, as is explained in the UEMURA
8 affidavit¹⁷⁸ was different from and of smaller competence
9 than the "Planning Board" ("Kikakuin"), which was set
10 up at a later date. As was explained by the witness
11¹⁷⁹ INO, the "Planning Bureau" was, during the time HIROTA
12 was its President, chiefly concerned with the estab-
13 lishment of the Ministry of Welfare which dealt with
14 innocuous matters like sanitation, welfare, etc.
15 HIROTA seldom ever attended the meetings and merely
16 affixed his signature to routine documents of the
17 Bureau when they came to the Cabinet and left prac-
18 tically all other business in charge of the Deputy
19 Chief of the Bureau. It is perfectly obvious that the
20 "Planning Bureau" had no connection with the formula-
21 tion of any policies or plans which have any relation
22 whatever to the allegations of the Indictment; and as
23
24 (177a. In the original Japanese text of Ex. 108, T.706,
25 the term Kikakucho is used.)
(178. Ex. 2802, T. 25,198)
(179. Ex. 3259, T. 29,658)

1 we read the summation of the prosecution it seems
 2 that they have changed their first thought about the
 3 function and competence of the Bureau of Planning.

4 69. The prosecution cited exhibit 2227¹⁸⁰
 5 in their charge that HIROTA, as President of the
 6 Bureau of Planning, participated in the "Five Year
 7 Plan" relating to military preparation; but, according
 8 to the testimony of the witness Kikusaburo OKADA¹⁸¹
 9 the "outline of the five year plan for the manufactur-
 10 ing and munition industries of the War Ministry"¹⁸² had
 11 no connection with the Civil Government¹⁸³ and that ex-
 12 hibit 2227, supra, was not an excerpt of that alleged
 13 plan. Instead, exhibit 2227 was an excerpt of the
 14 "Five Year Plan for Important Industries"¹⁸⁴ and that
 15 this latter plan was first adopted by the Cabinet
 16 meeting on January 17, 1939; that is to say, seven
 17 months after HIROTA's resignation from his last of-
 18 ficial position.¹⁸⁵ Furthermore, although exhibit 2227
 19 purports to have been submitted by AKIYAMA to HIROTA,
 20 it was not signed by HIROTA and otherwise it does not
 21 contain any evidence that it had ever been actually
 22 seen by him. It certainly is no evidence that HIROTA
 23

24 (180. T. 15,980)

25 (181. T. 18,271 et seq.)

(182. Ex. 841, T. 8,261)

(183. T. 18,273, 18,283, and 18,325)

(184. Ex. 842, T. 8,264, 18,327)

(185. T. 18,318)

1 participated in or approved any such plan. That
2 document is wholly ambiguous.

3 SECTION 12

4 THE TRIPARTITE PACT

5 70. The Tripartite Pact was concluded between
6 Japan, Germany and Italy in September 1940 after brief
7 negotiations between Foreign Minister MATSUOKA and
8 Stahmer. HIROTA held no government post at that time
9 and had been out of office ever since May 1938; there
10 is no evidence that as a private citizen he said or
11 did anything to favor the conclusion of that pact.
12 It is hardly worthwhile at this state in the argument
13 in emphasizing that there was not the slightest con-
14 nection between the Tripartite Pact and the Anti-
15 Comintern Pact.

16 It is true that prior to the actual signing
17 of the Tripartite Pact, fruitless negotiations had
18 been carried on for the conclusion of an alliance
19 between Japan and Germany under what has been since
20 called "strengthening of the anti-comintern" but as
21 is shown by the uncontradicted evidence those conversa-
22 tions took place after HIROTA retired from public office.

23 71. It has been shown by uncontradicted evi-
24 dence that HIROTA was strongly opposed to an alliance
25 between Japan and Germany. AHITA testified that in

1 March 1940 he recommended HIROTA as State Councillor
2 in the YONAI Cabinet because he was well aware of
3 HIROTA's firm stand against the conclusion of the ¹⁸⁶
4 Tripartite Pact or a military alliance with Germany.
5 Further, ARITA testified that HIROTA told him that he
6 (HIROTA) could not but be anxious about the result
7 which would be brought about by the conclusion of a
8 Tripartite Pact, pointing out the danger that it
9 might stiffen the attitude of the United States and
10 Britain toward Japan which in turn would prove a fatal
11 obstacle to the settlement of the China Affair, and
12 additionally that it might also exert an evil influence
13 on Soviet-Japanese relations. ¹⁸⁷ Admiral YONAI also
14 testified that while he was Premier in 1940, at an
15 interview exclusively between him and HIROTA, HIROTA
16 declared that the safer course for Japanese diplomacy
17 was to act in concert with Britain and the United
18 States, and that the alliance with Germany and Italy
19 would be most undesirable as it meant the danger of
20 involving Japan in the European war. ¹⁸⁸

22 72. Mr. Romer, long the Polish Ambassador to
23 Japan, in his affidavit quoting excerpts from his diary
24 made at the time (entry for January 21, 1941), testified

25 (186. Ex. 3290, T. 30,004)
(187. Ex. 3290, T. 30,004)
(188. Ex. 3291, T. 30,017)

that HIROTA personally told him that he judged the
1 policy pursued by Foreign Minister MATSUOKA with the
2 utmost severity and that MATSUOKA was following a pol-
3 icy likely to involve Japan in war with the United
4 States which would be "fatal to Japan." The diary of
5 Ambassador Grew (entry for February 1, 1941), which
6 was supported by his affidavit tendered to the Tribunal,
7 shows that Grew was informed at the time of HIROTA's
8 view about MATSUOKA pursuing a policy "fatal to Japan."¹⁹⁰
9 Although HIROTA was merely a private citizen at the
10 time the Tripartite Pact was concluded and had no
11 power to control the situation one way or the other,
12 it does show that he was lending his influence as
13 a private citizen to make known at home and to the
14 representatives of foreign countries his opposition
15 to the policy pursued by MATSUOKA. HIROTA was opposed
16 to the Tripartite Pact from first to last, foresaw
17 the train of travail that it was likely to and did
18 bring to Japan and he always regretted its conclusion.
19 Moreover, everything that HIROTA ever said or did
20 during the time he held high office shows that he was
21 not engaged in any common plan or conspiracy with Ger-
22 many or Italy. Therefore, there is no substance to
23
24 Count 5.

25 (189. Ex. 3293, T. 30,028)
(190. Ex. 3294, T. 30,036)

1 THE PRESIDENT: We will recess for fifteen
minutes.

2 (Whereupon, at 1045, a recess was
3 taken until 1100, after which the proceed-
4 ings were resumed as follows:)

5 MARSHAL OF THE COURT: The International Military
6 Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Mr. Yamaoka.

8 MR. YAMAOKA: May it please the Tribunal.

9 Continuing:

10 SECTION 13. HIROTA'S ACTIONS AFTER HE LEFT
11 OFFICE.

12 73. The prosecution has contended on the basis
13 of an entry from the HARADA-SAIONJI Memoirs of August 12,
14 1939¹⁹¹ that "KONOYE had interviewed him (HIROTA) and
15 found his opinions very similar to those of the army"
16 and to that ambiguous statement the prosecution contends
17 out of thin air that it meant that HIROTA entertained
18 ideas similar to those of the army with respect to a
19 military alliance with Germany. Of course, there is
20 nothing in that piece of evidence which suggests any-
21 thing of the kind. Exhibit 3807-A¹⁹² cited by the prose-
22 cution in support of these contentions consists of an
23

24 191. Pros. Sum., para. FF-109.

25 192. Tr. 37,846.

1 excerpt from the HARADA-SAIONJI Memoirs which refers
2 to the Five Ministers' Conference of August 8, 1939
3 in which there is no reference or mention of HIROTA
4 whatsoever. It is hardly necessary to repeat that at
5 that time HIROTA had already retired from public office
6 and had nothing to do with that conference. Moreover,
7 any such construction is inconsistent with a large
8 volume of other evidence, such as, for example, the
9 testimony of ARITA that HIROTA was opposed in 1939
10 and 1940 to a military alliance with Germany.¹⁹³ The
11 truth of the matter is that when HIROTA was offered the
12 Premiership in 1939, he declined, saying that he was
13 "worried about the attitude of the army," which at that
14 time was engaged in a campaign of "ostracism" and "an
15 expulsion movement" against him.¹⁹⁴ The prosecution
16 contention, therefore, is specious, misleading and
17 absolutely contrary to fact. The prosecution also
18 erroneously says¹⁹⁵ that HIROTA "withdrew his candidacy
19 on a report by HARADA of army opposition, in spite of
20 or in ignorance of those views"; and they cited as the
21 sole authority for that wild statement exhibit 3878.¹⁹⁶
22
23 As previously stated this piece of evidence shows beyond
24 doubt that HIROTA never sought the Premiership in 1939,

25 193. Ex. 3290 (Tr. 30,004).

194. Ex. 3878 (Tr. 38,677).

195. Pros. Sum. para. FF-109.

196. Tr. 38,677.

that others had agreed that he was the number one
1 "candidate"; but the word "candidate" in that context
2 simply meant that others had agreed among themselves
3 that HIROTA was a leading figure for appointment at
4 that time. In this connection also consider that, as
5 is shown by the same document, General UGAKI, an
6 acknowledged and well-known pacifist, had been
7 selected by others as the second choice candidate for
8 the Premiership. Otherwise expressed, the uncontra-
9 dicted evidence shows that on that occasion the Lord
10 Keeper of the Privy Seal and others had agreed among
11 themselves that the two leading "candidates" were
12 HIROTA and General UGAKI, both of whom were liberals
13 and men of pacific intention. As HIROTA was not
14 willing in 1939 to go along with the army and the trend
15 of the time but instead the army had started a movement
16 to ostracize and expel him no better or more powerful
17 demonstration can be given that he was not engaged in
18 any "common plan or conspiracy" with the army or any
19 faction within or without the government.

21 SECTION 14. HIROTA AS A SENIOR STATESMAN.

22 74. The prosecution has attempted to involve
23 HIROTA in the Pacific War because he attended certain
24 meetings called "senior statesmen conferences." The
25 argument of the prosecution is very sketchy and

197
1 incomplete. The prosecution does not support its
2 contention that HIROTA has a responsibility for the
3 commencement and continuance of the Pacific War. On
4 the contrary all the evidence shows that HIROTA was
5 opposed to the commencement of the Pacific War and
6 during its continuance did what was within his power
7 to contribute to the end of it. Even the prosecution
8 admits that at the last meeting of the senior statesmen
9 before the commencement of the Pacific War (November 29,
10 1941) the senior statesmen present, including HIROTA,
11 expressed opposition and "dissuading" opinions. 198 As
12 the prosecution's summation with respect to Mr. HIROTA's
13 activities as a senior statesman is so misleading and
14 incomplete it has become necessary for the defense to
15 give an extended account of his activities in that
16 respect, all of which is fully shown in the evidence.
17

18 75. "Senior statesmen" was an honorific title
19 popularly given to persons who had previously served
20 as Premier; it was not an official title; neither was
21 the senior statesmen's conference a state organ with
22 any power to decide government policies either from a
23 legal or a practical standpoint; those conferences used
24 to be called on the initiative of the Lord Keeper of
25
197. Pros. sum. pp. FF-64-65-65-A; paras. FF-111-113.
198. Ex. 1196 (Tr. 10,452).

the Privy Seal or others and not on any occasion on
the initiative or wish of the senior statesmen them-
selves. This is borne out, among other pieces of evi-
dence, by the affidavit of TOJO, paragraph 110,¹⁹⁹ where
it is made clear that the so-called senior statesmen's
conference was not a "conference" in any proper sense
of the term. It was simply an informal gathering with-
out a chairman and without resort to a voting procedure.
Furthermore, the senior statesmen of those days should
be distinguished sharply from the elder statesmen or
"genros" of the MEIJI Era; genros of that day were
favored with special Imperial messages which conferred
upon them marked distinctions as meritorious elder
statesmen, and they were responsible to a certain extent
for shaping national policies in those days, and were
in a position to participate in state affairs at the
highest level. The senior statesmen of recent times
were sometimes summoned to the palace only as former
Premiers, having no substantial competence.²⁰⁰ State-
ments made by senior statesmen in those meetings
therefore had no binding power on the government; and
the government was entirely free to consider or ignore
the views expressed by those men. The latter statement

199. Ex. 3655 (Tr. 36,364).

200. Tr. 36,365.

1 is made manifest when it is considered that the govern-
2 ment rejected the "dissuading" opinions expressed by
3 all the elder statesmen on November 29, 1941.

4 The prosecution pointed to two excerpts from
5 the KIDO diary, exhibit 1154,²⁰¹ dealing with the con-
6 ference of October 17, 1941, and exhibit 1196,²⁰² deal-
7 ing with the conference of November 29, 1941. Those
8 diary entries, however, instead of corroborating the
9 thin contention of the prosecution, furnish strong
10 evidence for HIROTA. According to exhibit 1154, KIDO
11 proposed at the very beginning of the senior statesmen's
12 conference of October 17, 1941 that War Minister TOJO
13 was a suitable person to receive the Imperial command
14 to form a cabinet because it was necessary to re-examine
15 the Imperial conference decision of September 6, 1941;
16 and that no senior statesman present, including HIROTA,
17 opposed that suggestion. It is true that HIROTA did
18 not oppose the suggestion of KIDO with respect to the
19 suitability of TOJO, in the circumstances of those
20 days; but he consented, notwithstanding the fact that
21 he was not even acquainted with TOJO, because he
22 trusted the soundness of the suggestion made by KIDO,
23 upon whom he relied for a correct judgment of the
24

25 201. Tr. 10,291.
202. Tr. 10,452.

situation then existing. The view of the advisor to
1 the Throne that the only way to avert war was to select,
2 as the Premier, a man who would re-examine the Imperial
3 conference decision of September 6, 1941 and return to
4 a "clean slate," and that TOJO was a man who would
5 carry out such a policy, sounded so reasonable and
6 promising for a successful conclusion of the Washington
7 negotiations that not one of the senior statesmen pre-
8 sent expressed opposition. That KIDO made the sug-
9 gession with respect to the selection of TOJO only
10 after careful study and deliberation is manifest from
11 the affidavit of KIDO.²⁰³ In recalling his interview
12 with TOJO,²⁰⁴ KIDO testified "I had noticed that the
13 General became more thoughtful, as it did not seem that
14 he would necessarily advocate war with America if the
15 navy was opposed to war. A change had apparently come
16 over his way of thinking in the past few days";
17 further in the KIDO testimony, paragraph 213, it is
18 stated "The next morning, October 17, 1941, Prince
19 KONOYE telephoned me and said it was his opinion TOJO
20 would be a better choice as Prime Minister than the
21 Navy Minister provided that he was given an Imperial
22 command to scrap the decision of September 6 and use
23
24
25
203. Ex. 3340 (Tr. 30,715).
204. Ex. 3340, para. 212 (Tr. 30,988).

his effort to effect cooperation and strive for peace." ²⁰⁵

1 As appears from the foregoing Prince KONOYE, too,
2 thought that War Minister TOJO was the most suitable
3 person to occupy the Premiership in the critical cir-
4 cumstances and uncertainty of those days. It was but
5 natural for ex-premiers, who had been retired from
6 politics, had no access to the confidential records
7 and discussions of the government and were not well
8 informed of the actual political situation to accept
9 the suggestion of KIDO, who did know the actual situation.
10 Moreover, at the time the senior statesmen accepted
11 that suggestion none of them had any knowledge with
12 respect to the full content of the Imperial conference
13 decision of September 6, 1941.
14

15 Upon receiving the Imperial order, General
16 TOJO formed a cabinet charged with the mission to
17 avert war. Before accepting the portfolio of Finance
18 Minister in the TOJO Cabinet, the defendant KAYA asked
19 TOJO if he was determined to open war with America,
20 and he accepted that office only after he had been
21 assured by TOJO that such a policy had not been deter-
22 mined and that he would stick to the policy of conti-
23 nuing the American-Japanese negotiations in Washington
24 in an honest attempt to reach a peaceful settlement. ²⁰⁶
25

205. Tr. 30,990.

206. Affidavit of KAYA, Section 6, Ex. 3337 (Tr. 30,648).

1 Furthermore, the defendant TOGO told TOJO, at the time
2 he was offered the post of Foreign Minister, that he
3 was unwilling to accept that position unless the
4 military would reconsider its position, with an inten-
5 tion to make considerable concessions to America with
6 respect to questions involving the evacuation of troops
7 and other matters; that is to say, he would decline
8 the office unless the military would sincerely cooperate
9 with his intention to reach an agreement with America
10 on a reasonable basis; and TOGO accepted office upon
11 that express understanding. ²⁰⁷ In this way, the TOJO
12 Cabinet was not a "war cabinet" but was a war preven-
13 tion cabinet and the early activities of that cabinet
14 all point to the fact that the intention of KIDO and
15 Prince KONOYE in selecting TOJO was aimed in the
16 direction of peace; and this is precisely what the
17 elder statesmen understood at the time they concurred
18 in the suggestion of KIDO. Of course, HIROTA had no
19 idea at the time he concurred in the suggestion of KIDO
20 that in the course of several months the Japanese
21 Government would be involved in the Pacific War.
22
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207. Affidavit of TOGO, para. 44, exhibit 3646
(Tr. 35,671 et seq.).

The prosecution has also pointed out that

1 in the conference of October 17, 1941 HIROTA favored
2 a military man for Premier and attempted to give the
3 impression that he wished to have a regime which
4 would carry out war. This contention is plainly un-
5 supportable. Aside from the fact that Japan had
6 been engaged in large-scale hostilities with the
7 Chinese for nearly four years at the time that
8 conference took place, HIROTA did favor a military
9 man as Premier, not because he desired war, but
10 because of his firm belief as the result of his long
11 experience in dealing with the army that it was the
12 only solution to real control of the military element
13 and so long as the army exercised a voice in the
14 government a military man should assume the responsi-
15 bility for the policy and action of the government.
16 Of course, HIROTA's ideas were all running along
17 the line of stability and control within the govern-
18 ment. The impression sought to be created by the
19 argument of the prosecution is a strange one indeed
20 when it is considered that during the Washington
21 negotiations in 1941, the State Department hesitated
22 to work out any agreement with Prince KONOYE, a
23 civilian, because it thought that such an agreement
24 would not fundamentally settle anything so long as
25

~~the Japanese army had the power in fact to take~~

1 actions along contrary lines; so in the critical
2 days of October 1941, the installation of a military
3 man in the Premiership, who had the power to direct
4 the government and also to control the army, was a
5 perfect answer to American doubts.

6 According to exhibit 532,²⁰⁸ introduced by
7 the prosecution, HIROTA said in the senior statesmen's
8 conference of July 17, 1940: "It seems the China
9 Incident cannot be easily settled. If the next
10 cabinet is as weak as it has been, there is no other
11 way but to continue the present state of affairs.
12 Judged from this viewpoint, it would also be a good
13 thing to have a suitable military man capable of
14 working closely with the army and the navy. However,
15 if there is no such man, besides, since the military
16 themselves wish it there is no problem about asking
17 Prince KONOYE to take the field." When HIROTA there
18 said that former governments were "weak," he meant
19 of course that former governments were not strong
20 enough to carry out their pacific intentions against
21 opposing ideas of the military; he knew that situation
22 very well as the result of his bitter and disappoint-
23 ing personal experiences as Premier and Foreign
24

25 208. T. 6240.

1 Minister; what he wished for was a government strong
2 enough to orient and control the military without
3 causing unnecessary friction between the army and
4 navy; and in the absence of that situation, he
5 thought a settlement of the China Incident was impos-
6 sible. This is the only import which can be derived
7 from HIROTA's words as recorded in the KIDO diary.
8 Compare also the testimony of Yasunasa MATSUDAIRA
9 who assisted KIDO in recording the summary of the
10 Senior Statesmen's Conference: ²⁰⁹ "I had often
11 chances to call on Mr. HIROTA by the order of the
12 Lord Keeper of the Privy Seal or to sit with him at
13 various meetings, official and unofficial. In most
14 of these cases he told me with regard to the cabinet
15 that the state of things at that time pointed to the
16 necessity of adjusting the eccentric way of the
17 military, and that, for that purpose, there was no
18 other way but to have military leaders occupy the
19 responsible posts and assume the helm of state with
20 a strict control over the military, and that civil
21 statesmen lacked such capacity." What HIROTA said
22 in the Senior Statesmen's meeting of July 17, 1940
23 was nothing more than a repetition of the foregoing
24 testimony of MATSUDAIRA. At that conference of
25 209. Exhibit 3292 (T. 30025).

1 July 17, 1940 General YAGAKI or Admiral SUZUKI would
2 have been recommended as a suitable candidate and as
3 an ideal person to control the military had it not
4 been for the former's past unsuccessful attempt to
5 organize a cabinet and had it not been for the
6 latter's firm resolve not to take such a post.

7 HIROTA continued to look for such an "ideal" man
8 who could control the military, but as he pointed out
9 at a later conference of Senior Statesmen, "there
10 is no such man." The position which HIROTA took
11 in the Senior Statesmen's Conference of July 17,
12 1941, ^{210.} about favoring the appointment of a mili-

13 tary man, was based on the same idea; that diary
14 entry of KIDO further states that HIROTA emphasized
15 in the conference the necessity of strengthening the
16 Imperial Headquarters, which meant that HIROTA wanted
17 to put civilians in the Supreme Command to act as a
18 tempering and moderating influence; and he pointed
19 to the fact that several eminent civilian statesmen
20 had been admitted to participation during the days of
21 the Russo-Japanese war. By these statements, HIROTA,
22 of course, was attempting to control and neutralize
23 military activities. It certainly does not help the
24 prosecution with its argument about "aggression."
25

210. EXHIBIT 1117 (T. 10166):

This point is illustrated in the MATSUDAIRA affidavit:

1 "As to the Imperial Headquarters, he (HIROTA) held that
2 its constitution should be enlarged by appointing some
3 of the Senior Statesmen as members of its staff, in-
4 stead of constituting its staff exclusively with
5 military and naval officers, as it had included civil
6 elements at the time of the Russo-Japanese war."

7 "Re-enforcement" of the Imperial Headquarters, as
8 mentioned in the KIDO Diary, could not possibly mean
9 re-inforcement of that body for the purpose of carry-
10 ing out war; clearly it pointed in the opposite
11 direction.
12

13 76. In the so-called Senior Statesmen's
14 Conference of November 29, 1941, HIROTA definitely
15 opposed the opening of a Pacific War and insisted
16 upon a continuation of the negotiations for a peaceful
17 settlement. So far as the negotiations were concerned
18 HIROTA had no view one way or the other with respect
19 to terms. The important thing in his mind was a
20 settlement. The prosecution referred to exhibit
21 1196, ^{212.} another entry from the KIDO Diary, which
22 necessarily was written in skeleton style for the sole
23 purpose of refreshing KIDO's mind and not for the
24 purpose of portraying a full and adequate picture of
25

211. Exhibit 3292 (T. 30026).

212. T. 10452.

1 what actually transpired, in order to lend some color
2 to its contention that HIROTA had some aggressive
3 instincts about the opening of the Pacific War or at
4 least did not go far enough in his "dissuading"
5 statements on that occasion. Exhibit 1196, correctly
6 read, says the following so far as HIROTA is concerned:
7 "According to the explanation of the government, the
8 negotiations with America seem to have come to a
9 critical stage, but diplomatic negotiations often
10 encounter critical stages; they may come twice, three
11 times or more. If negotiation were patiently con-
12 tinued, somehow managing to overcome them, the true
13 intentions of the parties will mutually be understood,
14 resulting in a successful conclusion. Therefore,
15 though negotiations have come to a deadlock, we should
16 not jump into a war. By chance, some such unhappy
17 incidents as blows may be exchanged at some outpost
18 area; even then, negotiations must be continued by all
19 means to reach a pacific settlement." That exhibit
20 contains nothing whatever to show that HIROTA had
21 some opinion to justify a war; it does not even show
22 that HIROTA conceded the unavoidability of the war
23 or the fact that was was "inevitable." It most
24 certainly does not even hint in the direction of
25

1 the prosecution argument that HIROTA merely favored
2 a "postponement" of the war and continuance of diplo-
3 matic negotiations "after hostilities had commenced."
4 Moreover, exhibit 1196 also shows that all the senior
5 statesmen held negative attitudes or definitely
6 counseled caution against the initiation of hostili-
7 ties. This is powerfully re-enforced by the testimony
8 of Admiral OKADA, in whom the Chief of Prosecution
9 said he had "great respect and confidence,"²¹³ who
10 testified: "We all expressed negative opinions,"
11 and further, "As we had no accurate knowledge of the
12 situation we had no alternative than to take negative
13 stands and counseled caution."^{214.}
14

15 Referring again to exhibit 1196, it is to be
16 noted that there was a marked difference between the
17 opinion of HIROTA and that of other Senior Statesmen;
18 that is to say, HIROTA advised the continuation of
19 the negotiations, while other Senior Statesmen present
20 pursued negative and dissuading opinions. Therefore,
21 it could be said that HIROTA did something more than
22 take a negative attitude and in those critical cir-
23 cumstances voiced a positive opposition to the opening
24 of war.

25
^{213.} T. 29301.
^{214.} Exhibit 3229 (T. 29258).

77. The prosecution again refers to
215.
1 exhibit 1278, another sketchy and skeleton ex-
2 cept from the KIDO Diary, that HIROTA said at the
3 Senior Statesmen's Conference of July 18, 1944, after
4 the war had already been in progress for three and
5 a half years, that the execution of the war was first.
6 Aside from the fact that the issue of whether or not
7 the war was one of aggression is a triable issue and
8 also laying aside the fact that whether or not a war
9 is one of aggression would ordinarily be determined
10 as of the time it began, it is clear from an examina-
11 tion of the foregoing exhibit that nothing that
12 HIROTA said on that occasion lends itself in the
13 least to any idea that he was in favor of the con-
14 tinuance of the Pacific War to the last; and other-
15 wise it bears no construction as the prosecution seeks
16 to draw. In that conference HIROTA said, bearing in
17 mind that Japan had suffered serious setbacks and
18 defeats as of that date, (1) that a situation may
19 arise when the most radical steps might be necessary
20 to save something out of the situation; (2) that the
21 safety of the Imperial Household should be considered;
22 (3) that the new government must be of the highest
23 organization to cope with the situation; and (4) that
24 215. T. 11377.
25

the possibility should be examined with respect to
having an Imperial Prince as the Premier.

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The first two considerations clearly show
1 that HIROTA foresaw the defeat of Japan; the last two
2 considerations foresaw the measures which would be
3 necessary at the end of the war in order to hold
4 the people and polity of Japan together. In 1944
5 HIROTA thought that defeat would plunge the nation
6 into the greatest confusion and no ordinary man at
7 the head of the Government could cope with that
8 extraordinary situation; hence his opinion which
9 suggested the installation of a member of the Imperial
10 family, a symbol which would be revered and obeyed
11 by the entire nation. HIROTA pushed that opinion by
12 saying: "I think it is necessary to form at this
13 moment a real entire-nation cabinet with an Imperial
14 Prince in its center." When HIROTA's plan for the
15 installation of an "Imperial family cabinet" was
16 rejected, he advanced another idea and suggested an
17 Imperial order cabinet or a war-navy coalition cabinet.
18 Therefore, it is clear that HIROTA thought that if
19 an Imperial family cabinet was impossible, the prestige
20 of a coming possible "weak" cabinet should be bolstered
21 by a special Imperial order; and in short, HIROTA
22 thought it was necessary to have a "strong" cabinet
23 powerful enough to deal with the anticipated turbulent
24 situation at the end of the war.
25

78. When Prince KONOYE recommended Admiral
1 SUZUKI as the Premier in 1945, HIROTA supported him
2 and considered that the Admiral was a proper man to
3 deal with the critical conditions of those days.
4 SUZUKI was known to HIROTA and widely known as a
5 liberal and pacific influence who would be able to
6 guide Japan in concluding the war. SUZUKI was the
7 men who actually ended the war by accepting the
8 Potsdam Declaration; and as was shown by the testimony
9 offered in the HIRANUMA case, SUZUKI had been installed,
10 irrespective of outward appearances, in order to seize
11 the opportunity for the termination of the war ²¹⁶ .
12 It reveals the situation in which neither the elder
13 statesmen nor the Government could openly come out
14 and broadcast their real intention about the termination
15 of the war. As appears from exhibit 3646, paragraph
16 134, the affidavit of TOGO, HIROTA, together with
17 Admiral OKADA, Tsuneo MATSUDAIRA, Yasumasa MATSUDAIRA
18 and Tsunehisa SAKOMIZU, requested Mr. TOGO to enter
19 the SUZUKI Cabinet and lead it for the sake of peace ²¹⁷ .
20 According to the same exhibit (paragraphs 138-139),
21 HIROTA, in compliance with the request of Foreign
22 Minister TOGO, visited the Soviet Ambassador Yakov
23 Malik on several occasions in the spring of 1945 and
24 217. T. 35,618.
25

1 earnestly conferred with him in an effort to secure
2 Soviet good offices in re-establishing peace. Thus,
3 it appears from all the evidence in the case that
4 HIROTA opposed the decision of the Government that
5 the Pacific war was "inevitable", and from first to
6 last during the continuance of hostilities worked
7 insofar as it lay within his power as a private citizen
8 to bring an end to hostilities. Moreover, it ought
9 to be told that during the entire period of the
10 continuance of the Pacific war HIROTA met secretly with
11 Shigeru YOSHIDA at out of the way places, whom it will
12 be remembered HIROTA sought to appoint as his Foreign
13 Minister in the HIROTA Cabinet and who was not able
14 to take that place because of Army opposition but
15 whom HIROTA nevertheless appointed as Ambassador to
16 Britain, and who was the second Premier of Japan in
17 the allied occupation, with the full approval of the
18 Supreme Commander; they had a number of conversations
19 looking to ways and means of terminating the war which
20 both men regarded as a mistake which would accomplish
21 absolutely nothing in the end; YOSHIDA was caught by
22 the Kempei and was actually arrested; at the same
23 time the Kempei sought to arrest HIROTA but this could
24 not be accomplished because HIROTA had reached the
25 station in life in Japan where he was not subject to

errest without the permission of His Majesty.

1. Although the prosecution has known about this episode
2. for fully two years, it, of course, carefully avoided
3. proving anything which might help HIROTA and at the
4. same time sought to take a word here and there out
5. of ineptly recorded diaries, which were never designed
6. to depict the full situation, and, thus, make it appear
7. by way of distortion that HIROTA was really an
8. aggressive person who camouflaged all his actions
9. behind "cleverness" and "smoothness". This Honorable
10. Tribunal will fully realize that this effort on the
11. part of the prosecution has backfired and, far from
12. proving the allegations of the Indictment, truly
13. reveals the real nature and character of the man as
14. a stalwart for the maintenance of friendly relations
15. with all nations and of peace on earth and good will
16. toward men.
17.

18. SECTION 15

19. THE ARGUMENT OF THE PROSECUTION

20. 79. We do not propose to deal here with
21. each of the many errors which appear throughout the
22. elongated argument of the prosecution; and, therefore,
23. HIROTA denies the prosecution argument in its entirety.
24. As HIROTA was never conscious of having been part of
25. any "common plan or conspiracy" and he has no intention

1 of entering into an argument with respect to matters
2 which occurred while he held no official office, the
3 critical discussion of the prosecution's argument
4 will be confined to several of the more important
5 matters which transpired during the days he did hold
6 office.

7 80. The alleged conspiracy which the
8 prosecution has attempted to trace and describe is
9 one of the most curious and unbelievable things ever
10 sought to be drawn in a judicial proceeding. A long
11 series of isolated and disconnected events covering a
12 period of at least fourteen years are marshalled
13 together in hodgepodge fashion; and out of this
14 conglomeration the prosecution asks the Tribunal to
15 find beyond all reasonable doubt that a "common plan
16 or conspiracy" existed to accomplish the objectives
17 stated in the Indictment, although the prosecution, as
18 is shown by their argument, has been hard put to it
19 even to point out an outline of any such common plan
20 or conspiracy. It is perfectly obvious that HIROTA
21 was not acquainted with a large majority of the
22 defendants who sit in the dock with him. Men like
23 DOHIHARA, HASHIMOTO, HATA, HOSHINO, ITAGAKI, KIMURA,
24 KOISO, MUTO, OKA, OSHIMA, SATO, SHIMADA, SUZUKI and
25 TOJO, UMEZU and others had no opportunity to come into

1 contact with HIROTA during the days he occupied the
2 Foreign Ministership and Premiership; and, of course,
3 HIROTA had no opportunity to know any views entertained
4 by those men or views entertained by most of the
5 men indicted with him in this case. As all the
6 larger powers in the world naturally desire to expand
7 their foreign trade in order to maintain or increase
8 the prosperity of their own people and at the same
9 time concurrently take appropriate measures to insure
10 the means for self-defense for themselves, it is easy
11 to see that had the method pursued here by the
12 prosecution of marshalling together hundreds of isolated
13 and disconnected facts been applied to the activities
14 over a similar period of other powers, every major
15 nation in the world could be adjudged guilty of
16 preparing for and waging wars of "aggression", although
17 from their own nationalistic point of view and intention
18 there was no such purpose.

19 81. The prosecution says that the alleged
20 conspiracy was on a rather dubious footing until the
21 Cabinet decision of August 7, 1936, at which time
22 HIROTA was Premier. They point to a single piece of
23 evidence (F-1)²¹⁸ and this is supposed to be the real
24 backbone of their case up at least until the time the
25 decision was made by Japan to enter the Pacific war.
218. Ex. 216 (T. 2727-8).

1 That piece of evidence involved an ineptly worded
2 decision of the Five Minister's Conference of August
3 7, 1936. The prosecution saw fit to read into the
4 transcript only part of that decision, which looms so
5 large in their estimation, and for that reason that
6 decision is reproduced in its entirety:

7 "I. The basic principle of governing the
8 state is to realize the ideal of the founding of the
9 Empire, which means to solidify, based on righteousness,
10 the national foundation inwardly and prosper outwardly,
11 making the Empire both in name and reality a stabilizing
12 power in East Asia, thus securing peace in East Asia,
13 and contributing to the well-being and happiness of
14 the whole world.

15 "In view of the situation in and out of the
16 Empire, the fundamental national policy to be established
17 by the Empire is to secure the position of the Empire
18 on the East Asia Continent by dint of diplomatic
19 policy and national defence, mutually dependent on
20 each other, as well as to advance and develop the
21 Empire toward the South Seas. The basic principles
22 are as follows:

23 "1. It is the realization of the Imperial
24 way to correct dominating policies of the powers and
25

1 to share mutual happiness according to the real spirit
2 of co-existence and co-prosperity. This should be
3 our consistent guiding principle for our outward
4 developing policy.

5 "2. We should replete our national defence
6 and military preparations, which are necessary to
7 secure peace for the nation, protect its development,
8 and to ensure the position of the Empire, which should
9 be a stabilizing power in East Asia.

10 "3. The fundamental principles of our
11 continental policy are as follows: a sound development
12 and accomplishment of Manchoukuo; intensification of
13 national defence of Japan and Manchoukuo in order to
14 eradicate the Soviet menace in the north and at the
15 same time to prepare against Britain and America;
16 and realization of a close cooperation among Japan,
17 Manchoukuo and China for our economic development.
18 In carrying out these policies, we should be careful
19 to have friendly relations with other countries."
20

21 By reference to the prosecution argument
22 (F-1) and at other places throughout the entire argument,
23 the prosecution has taken the words "national defence"
24 and converted them to "war"; it has taken an innocent
25 expression dealing with the expansion of trade "toward
the South Seas" and added to it that the expansion or

1 advancement was to be secured by the use of armed
2 force; it has said that "national defense" is not
3 "the usual correlative to diplomacy", and that the
4 usual "alternatives are diplomacy and war". It is
5 again perfectly obvious that there is nothing
6 inconsistent in associating in a single decision at
7 the highest level of government considerations of
8 diplomacy and national defense. Under the legerdemain
9 employed by the prosecution in its discussion of the
10 import of the foregoing decision reached at the Five
11 Ministers' Conference, it would be possible to indict
12 every statesman in the world because they consistently
13 refer to diplomacy and national defense. Moreover,
14 it must be considered that there was no reason for the
15 Japanese to use the "national defense" if they really
16 meant "war". The foregoing decision was a top secret
17 document of the Japanese Government. When it was
18 formulated the Japanese did not have the slightest
19 reason to suspect that such a decision would ever
20 fall into the hands of third powers or that their
21 brief and ineptly recorded expressions would be revamped
22 and transposed by those who read with a biased eye
23 and a predilection to sustain allied attitudes toward
24 the Japanese people. The decision of August 7, 1936
25 contains nothing to show that Japan drafted any plan

1 to initiate or wage declared or undeclared wars of
2 aggression against either China or countries in the
3 South Seas region; and there is nothing in the
4 collateral circumstances in Japan either before or
5 after that decision tending to show that Japan had
6 adopted a plan for aggression. In the individual
7 summation (FF-3) the prosecution again refers to the
8 decision of August 7, 1936 as being the "keynote" to
9 HIROTA's character and policy. There they say on
10 the basis of the August 7, 1936 statement that in
11 HIROTA's mind "national defense" was merely a "euphemism
12 for the use of military power for aggressive purposes".
13 This is argument run riot. If the words of the topmost
14 diplomats and political figures in the world were
15 read in similar distortion and weasel fashion, none
16 of them would have any defense whatever against the
17 battery of prosecutors involved in this case. Again
18 the prosecutors say that HIROTA "was a man who frequently
19 made pacific speeches and explanations to foreign
20 powers, but his real intention throughout was to expand
21 Japan's influence as far as possible by diplomacy
22 backed by threats of force" (FF-3). The truth is,
23 of course, that there is not a single line of evidence
24 anywhere in the case from which an inference could
25 be drawn or even hinted at that HIROTA sought to accomplish

1 anything in Japan by a threat or intimation of the
2 use of force. Everything which HIROTA has said and
3 done during a long period of public service, as is
4 shown by a large amount of uncontradicted evidence,
5 points him out as a man of peace, imbued with the
6 spirit of "harmony among all nations", and an
7 acknowledged liberal and pacifist. With further
8 reference to the decision of August 7, 1936, it needs
9 no argument to demonstrate that Japan had the right
10 to protect its nationals and their large legitimate
11 property interests on the continent of East Asia
12 by "diplomatic policy and national defense"; it had
13 the right while being progressively shut out of its
14 old markets throughout the world by tariffs and other
15 trade barriers to expand peacefully its foreign trade
16 in relatively undeveloped areas such as the South
17 Seas and for the purpose to encourage its nationals to
18 devote more attention to trade with that area, make
19 investments in commercial enterprises, plantations,
20 etc. to the extent permitted by the laws of the
21 countries lying in that area. Such a policy, as
22 permitted by all the leading nations of the world,
23 and peaceful economic exploitation and development
24 is a matter which does not fall within the scope of
25 the issues laid by the Indictment in this case. There

1 is nothing in the decision of August 7, 1936, when read
2 with a fair eye, to show that Japan intended to use
3 force to attain any unjust objective; and all the
4 circumstances of that period argue against the
5 overdone and strained contention of the prosecution.
6 Lastly, if the prosecution relies upon the August
7 7, 1936 statement of policy as the bulwark or sustaining
8 pillar of its alleged conspiracy up until at least
9 the Pacific war, it is, indeed, leaning its whole
10 case on a single broom straw ²¹⁹ .

11 82. Referring to the prosecutions' summation
12 (FF-7), if there were some frictions between the
13 Soviet and Manchoukuo concerning the function of the
14 Chinese Eastern Railway, there is no evidence that the
15 Japanese Government provoked such friction for the
16 purpose of putting pressure on the negotiations. The
17 prosecution's contention that the Russian Consulate
18 at Harbin complained strongly to the Japanese Foreign
19 Office representative on the subject (Ex. 748) is a
20 mistake. The addressee of the protest was the
21 representative of the Foreign Office of Manchoukuo,
22 not of Japan ²²⁰ .

23 83. The prosecution alleges that about the
24 220. TOGO testimony (T. 36,139-40).

25 219. Analysis of this decision of August 7, 1936, is
given in Section 6 hereof.

end of 1935 Japan had aggressive aspirations toward
1 the Soviet Union and that these existed in the minds
2 of the Foreign Ministry as well as in the Army (FF-9),
3 invoking for that purpose a letter from SHIRATORI
4 to ARITA²²¹. The perusal of this document will show
5 clearly that it is nothing more than a private letter
6 in which the writer stated merely his own and private
7 view to one of his colleagues. Whatever may be the
8 view expressed in that letter, it represents in no
9 way the opinion or policy of the Foreign Minister
10 or the Government.

11
12 84. In this respect, it may be pointed out
13 that, even if the preliminary negotiation of a pact
14 had been started while HIROTA was Foreign Minister
15 (prosecution summation FF-13), between Ribbentrop and
16 the Japanese military attache at Berlin, the Foreign
17 Office at that time had nothing to do with that
18 conversation²²².

19 85. A reference is made in the prosecution's
20 summation (FF-18) to the testimony of witness KONDO.
21 The Tribunal will recall that this witness at first
22 admitted the entry of the HARADA-SAIIONJI Memoirs
23 cited by the prosecution²²³ as he understood that the

24 221. Ex. 774-A (T. 7,383).

25 222. Ex. 677 (T. 5,913-16), Ex. 478, (T. 5,917-18).

223. Ex. 3777-B (T. 37,668).

1 alleged statements of Premier OKADA and Foreign
2 Minister HIROTA contained in that entry were made
3 at the time of the abrogation of the Washington Naval
4 Treaty but not before. Later, in redirect examination
5 he rectified his former testimony, stating that
6 neither OKADA nor HIROTA had made such statements
7 before the abrogation of the Treaty ²²⁴ .

8 86. The prosecution (FF-25) refers to the
9 first report adopted by the League of Nations Assembly
10 on October 6, 1937 where Japan's actions were condemned
11 as being in breach of the Nine-Power Treaty and the
12 Kellogg-Briand agreement of 1928 and they apparently
13 seek to have this Honorable Tribunal treat that
14 political decision, as well as the decision on the
15 Lytton Report, as a finality in this case, not subject
16 to re-examination by a judicial tribunal. Aside from
17 the fact that judicial tribunals in the very nature
18 of things are not equipped to adjudicate "political"
19 questions, this Tribunal has already indicated on
20 several occasions that the views expressed by the
21 League will not be given any conclusive effect in these
22 proceedings.

23 87. The prosecution says in its summation
24 (FF-40) that HIROTA was Premier when the treaty between
25 224. T. 26,703.

Japan and Manchoukuo was signed abolishing the rights

1 of extraterritoriality in Manchoukuo and that this

2 treaty "encroached upon the rights of nationals of

3 the United States as accorded them by the treaty

4 concluded between the United States and China",

5 citing Exhibit 944²²⁵ and Exhibit 2476, A.B.C. D.²²⁶

6 An examination of those two exhibits fails to disclose

7 any basis for the statement made by the prosecution

8 with respect to encroachment upon the rights of

9 nationals of the United States or any other nation.

10 88. The prosecution says that the decision

11 of August 7, 1937, covered a far wider field (FF-58)

12 and that Shanghai was already at that time included

13 in the principal areas for using military force on

14 land (FF-61). This submission is due to the misreading

15 of Exhibit 3735²²⁷ which is quoted by the prosecution

16 to sustain this allegation. This document contains

17 two decisions. The second part is really the decision

18 taken by the Ministers concerned on August 7, 1937

19 as is clearly mentioned in the heading of this part

20 of the document. As to the first part of this

21 document which bears no date, it is to be remarked

22 that this part is originally a separate document from

23

24 225. T. 9,418.

25 226. T. 20,473.

227. T. 37,219.

the second part. If the Tribunal compares this part

with Exhibit 3262, "An Outline Regarding the Settlement
of China Incident", decided on October 1, 1937²²⁸, it

would not be difficult to see that these two documents
are substantially the same. The identity is clear
in the original Japanese text. Therefore, both are
the same "Outline" decided on October 1, 1937.

Probably the prosecution picked up from a file containing
various decisions these two decisions and put them
together in one Exhibit 3735 and treated the first
part as a part of the second part, while the first
part is the "Outline" decided on October 1, 1937 and
the second part is the decision of August 7, 1937.

Needless to say, on October 1, 1937 the
hostilities had already occurred in the Shanghai area
and the fighting zone covered a large area. It is
quite natural, therefore, that on October 1, 1937 the
Japanese Government included Shanghai in the "principal
areas for using military force."

The fact that Japan did not consider Shanghai
in the field of operations prior to the Shanghai
Incident is established by another piece of irrefutable
evidence. On August 2, 1937 the Chief of the General
Staff confirmed to the Emperor that the Army would not
228. T. 29,771.

1 extend its operations farther than the Paoting line ²²⁹ .
2
3 89. The prosecution says (FF-66) with
4 respect to the tea party which HIROTA gave for
5 Japanese industrialists in soliciting their support
6 to suppress the anti-British movement then under way
7 in Japan that HIROTA expressed the fact "that Japan
8 might eventually have to fight England, although at
9 that moment the time was not ripe for an Anglo-Japanese
10 war", citing Exhibit 3784-A ²³⁰ , a piece of evidence
11 offered in the individual defense of HIROTA. What
12 the prosecution says is a gross distortion of that
13 exhibit. This exhibit shows that on November 2, 1937
14 HIROTA, in addressing the industrialists said "This
15 anti-British movement is very embarrassing at present.
16 Especially at present, there is no other country besides
17 England who would act as an intermediary between Japan
18 and China. Therefore, if such things are done now,
19 the Government will be placed in a very awkward position.
20 In the end we may have to fight England. Or, we may
21 also have to collide with her some time, but such
22 things are absolutely out of the question right now.
23 Especially, from the diplomatic point of view, the
24 Government will be greatly inconvenienced if such

25 229. Ex. 3875-A (T. 38,658).
230. T. 37, 695.

1 things are to be carried out at present." Consider
2 also that immediately upon the reading of that exhibit,
3 the President of the Tribunal remarked "That seems
4 to be wholly innocuous,"

5 90. The prosecution says (FF-81) that
6 Dirksen wired Berlin on January 17, 1938 and
7 "condemned the action of Japan in breaking off the
8 negotiations and cited her as being responsible to
9 the world for such action", citing Exhibit 486-G²³¹.
10 What Dirksen said there was "Even if Japanese impatience
11 over prolonged and unsatisfactory attitude of China
12 is understandable, Japan bears responsibility to the
13 world for breaking off the discussion"; and "The
14 rupture of connection with Chinese Government and the
15 severe declaration was decided upon only after violent
16 debate of many hours in which a part of the military
17 authorities supported continuation of the negotiations."

18 91. Again the prosecution says (FF-81)
19 that in a speech in the Diet on February 16, 1938,
20 HIROTA said "that Japan had never tried to compromise
21 with Chiang Kai-shek and would only enter into direct
22 negotiation if Chiang Kai-shek accepted the Japanese
23 terms, and that Japan had pursued a policy of chastising
24 231. T. 5,999.
25

China in order to change her attitude", citing
232
Exhibit 3737-A .

1
2 It is a record of the budgetary commission
3 of the House of Peers called on February 16, 1938,
4 just one month after the KONOYE declaration which
5 proclaimed that the Japanese Government would no
6 longer deal with the Chiang Kai-shek regime.
7

8 This evidence shows that Baron OKURA made
9 a vehement attack on Foreign Minister HIROTA's policy
10 on the ground that it was too lenient towards Chiang
11 Kai-shek and his Government. He blamed the Cabinet
12 for dealing with the Chiang Kai-shek regime, nourishing
13 a conciliatory intention, and entering into negotiations
14 with them through the German Ambassador.

15 Mr. HIROTA, as a Cabinet member, had to refute
16 the attack. In defending his own policy, he explained
17 the development of the situation up to that time. In
18 consideration, however, of the general circumstances
19 and the trend of the public mind at that time, he was
20 compelled to use an expression which would match the
21 atmosphere then prevailing in the Diet, for it was
22 feared that, otherwise, his explanation would provoke
23 unnecessary disturbances and stimulate the extremists,
24 which was of course undesirable for the pursuance of
25 232. T. 37,285.

AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the
Tribunal please, the following language correction is
submitted. Reference: Exhibit No. 643, page 1, last
paragraph, delete that part of the paragraph beginning
with "I was informed," and substitute: "Having been
notified that the committee meeting of the Privy
Council which had been in session since this morning
at last adjourned at 7:30 p.m. and that the plenary
session would convene at 9:30, I went to the Palace
at 9:45 and upon learning that it had adjourned at
10:20 and that everything went well, I retired from
the Palace."

THE PRESIDENT: Thank you, Captain.

Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal,
I shall continue on page 199, paragraph 92:

92. The prosecution says (FF-85) that HIROTA
cabled diplomatic officials in Hong Kong and Shanghai
on February 8, 1938 with respect to various propaganda

leaflets and pamphlets, citing exhibit 3271-A. ²³³

1 This document, claimed to be a copy of a telegram of
2 the Foreign Office, bears no signature and lacks many
3 descriptions such as the despatch number, the date of
4 despatch, etc., necessary for proving that it was
5 really sent. For these reasons it may have been a
6 mere draft, for what action was taken thereon is un-
7 known. If it was really despatched, it must have
8 been sent by the Chief of the Information Bureau.
9

10 Although it bears descriptions that it was
11 despatched in the name of the Foreign Minister, this
12 does not necessarily mean that it was actually sent
13 by the Foreign Minister. The witness HORINOUCI has
14 testified that all out-going telegrams of the Foreign
15 Office bear the name of the Foreign Minister even
16 when they are actually despatched by the Chief of
17 the Information Bureau.²³⁴ Thus, the fact that the
18 telegram bears the name of the Foreign Minister does
19 not necessarily mean that the Foreign Minister has
20 really examined or approved of its contents. It is
21 the practice in the Foreign Office that the Foreign
22 Minister puts his own signature to every official
23 document which is brought before him for his approval.
24 And accordingly, the lack of signature on his part
25

233. Tr. 37255.

234. Tr. 29898.

proves that he had not seen or approved the document.

1 In view of the above, it would be impossible to hold
2 Mr. HIROTA responsible for anything because of such
3 doubly doubtful document.
4

5 93. The prosecution says (FF-94) that the
6 excuse that the bombing of the Panay and the Ladybird
7 was accidental is shown to be untrue by the evidence
8 mentioned above and that fact must have been known
9 to be untrue by HIROTA. This is quite a fantastic
10 assertion. None of the evidence introduced in the
11 Tribunal suggests even slightly that HIROTA had been
12 insincere in presenting his apologies for these occur-
13 rences or that he had any doubt as to whether the
14 incidents were not really accidental. The allegation
15 of the prosecution is absolutely groundless.
16

17 94. The prosecution says (FF-96) that HIROTA
18 had been a participant as Premier in the decision of
19 June 30, 1936, where the basis of Japan's national
20 policy had been decided, which was to include
21 "getting rid of the menace of the U.S.S.R., while
22 preparing against Great Britain and the United States,"
23 and they cite in support of that statement exhibit
24 978.²³⁵ Exhibit 978 was received in evidence on the
25 prosecution's case but no part of that exhibit was
235. Tr. 9548.

1 read by them into the transcript. Although this
2 point was fully dealt with in section 6, paragraph
3 37 of this summation and again in this section at
4 paragraph 81, we ask the Tribunal to inspect that
5 exhibit because it affords no justification for the
6 foregoing statement of the prosecution. That exhibit,
7 among other things, says:

8 "On 30 June 1936, after the cabinet con-
9 ference ended, the premier, the foreign and financo
10 ministers remained on request by both the army and
11 navy ministers. At the meeting of the above five
12 ministers, the navy minister presented the annexed
13 report (Basic Principle of State Policy) and explained
14 it. * * *

15 3. The foreign minister said that in view
16 of the present international situation, it was neces-
17 sary for Japan to make efforts to avoid isolation.
18 Since in (3) of Item 1, it is stated 'strive for
19 friendly relationship with foreign countries,' the
20 foreign minister considered the spirit to be in
21 line with his idea. However the phrase 'to provide
22 against England and America' seemed to be cause for
23 some apprehension and he requested a definition of
24 this phrase. The navy minister explained that this
25 was only a provision for military preparedness in

1 case of emergency and that it was absolutely not
2 intended to look upon England and America as
3 enemies. The foreign minister then stated that
4 under the present international situation, Japan
5 should not only be regardful of keeping friendly
6 relationship with England and America but should
7 strive further to assume a more conciliatory atti-
8 tude than in ordinary circumstances."

9 95. The individual summation of the
10 prosecution dealing with HIROTA contains many addi-
11 tional errors. Most of the erroneous statements
12 have been corrected in the main part of our summa-
13 tion. Because of our desire to keep this summation
14 within reasonable bounds, it has been necessary to
15 omit detailed reference to many of the other minor
16 errors in the summation of the prosecution.

17 SECTION 16.

18 GENERAL CONTENTIONS WITH REGARD TO THE
19 INDICTMENT AND THE LAW
20

21 96. The accused again most respectfully
22 urges the Tribunal to reconsider his motions which
23 he first sought to file in May 1946, did file at the
24 conclusion of all the evidence on behalf of the
25 prosecution, and refiled in amplified form at the
conclusion of all the evidence, dealing with the

1 jurisdiction of the Tribunal and the powers vested
2 in the Supreme Commander; and he respectfully asks
3 the Tribunal to dispose of those contentions in its
4 final judgment. The accused also moves again that
5 this Honorable Tribunal dismiss each and every count
6 of the Indictment relating to him because there is
7 no substantial evidence in the record to support any
8 one of those counts, and because the prosecution has
9 failed to establish its case in any respect beyond
10 all reasonable doubt. Additionally, the accused
11 submits that all the evidence in the case shows that
12 there is more than a reasonable doubt with respect to
13 his guilt under any single count; and that in any
14 event the hypothesis of innocence has not been over-
15 come by the preponderance of proper evidence.

16 All the matters submitted in the general
17 defense summations in so far as they are not contro-
18 verted in this individual summation are adopted by
19 this accused and it is respectfully requested that
20 they be deemed a part of this summation, as though
21 herein specifically set forth.

22 97. The accused most respectfully requests
23 this Tribunal to give deep consideration to the fact
24 that mortal men summoned to serve their Government
25 and to discharge the functions of government at the

1 highest stratum lose their character and identity
2 as individuals and mortal men whose judgments are
3 subject to all human frailties, and that having lost
4 their identity as individuals the acts they perform
5 or omit are in reality the acts of the sovereign
6 itself; and that if it were otherwise, governments
7 themselves would find it most difficult to function
8 because of sheer inability to obtain the services of
9 men of ability and common sense who are willing to
10 subject themselves to trial by an international
11 tribunal exercising criminal jurisdiction for acts
12 and omissions gauged as a result of the accidental
13 vagaries of a possible future war.
14

15 98. HIROTA as Foreign and Prime Minister
16 was obliged to handle the affairs of government
17 within his competence and authority in the wake of
18 the Manchurian Affair and the emergence of Manchukuo
19 which were fait accompli before he assumed public
20 office. The China Incident occurred and developed
21 under circumstances beyond his control or competence.
22 As to the Pacific War, his opposition was the voice
23 of a mere private citizen without competence or
24 authority. He did his best to check the spread of
25 hostilities and the tragic outbreak of war notwithstanding, as no other pacific-minded statesman could,

but in vain because of circumstances over which he
1 had no real voice or control.

2 The standard of criminal responsibility for
3 one's act or nonfeasance under any system of law
4 should be that required of any ordinary common man
5 not that of a super-human. HIROTA did everything
6 that an ordinary statesman under similar conditions
7 could do in pursuing the path of peace. The principle
8 of "Nichtzumutbarkeit" (impossibility of reasonable
9 expectation, requirement or demand) which is well
10 established in law theoretically as well as practically
11 should be applied. The law cannot and should not
12 require more than that.
13

14 For all the foregoing reasons, it is with
15 great deference and respect submitted that there is
16 no justiciable issue under the Charter; that the
17 Indictment and the counts do not charge offenses
18 known to international law and justiciable thereunder;
19 that the prosecution has wholly failed to sustain its
20 burden of proof as against this accused; that instead
21 HIROTA Koki, upon an impartial review of the entire
22 record in this case, should be acquitted of all the
23 charges brought against him. This record convincingly
24 confirms the high regard and esteem expressed by un-
25 impeachable and authoritative statesmen and diplomats

1 of some of the nations here represented who dealt
2 with him intimately during the turbulent years of
3 his career. It is they who know him well. It is
4 they who have come to his succor even though an enemy
5 in defeat in order that justice may be done. May
6 this Tribunal return a finding of acquittal which
7 he so well deserves and permit him again to walk the
8 path of peace.

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1 MR. HAYASHI: I am Council HAYASHI, Itsuro,
2 for the defendant HASHIMOTO, Kingoro.

3 With the Court's permission I should like to
4 point out prior to reading our summation the parts
5 which I shall refrain from reading but which I desire
6 to be entered into the record:

7 A. (pp. 1-7) The table of contents and the
8 Introduction to the general argument.

9 B. (pp. 24-30) Chapter III of the general
10 argument.

11 C. (pp. 45-53) Chapter IV, 1, b. of the
12 general argument.

13 D. (pp. 68, line 6 - p. 77) Chapter IV,
14 3 of the general argument.

15 E. (pp. 71-72) Appendix to the special
16 argument.

17 (The portions above referred to
18 are copied as follows:)

19 CONTENTS OF SUMMATION FOR HASHIMOTO KINGORO.

20 Table of Contents

21 INTRODUCTION

22 General Argument

23 Chapter I. Serious Fallacies in the Indictment.

24 1. Transition of Political Power.
25

1 2. The Three Major Facts Have No Connection.

2 3. Mistaken Judgment of Accused KIDO.

3 Chapter II. Accused HASHIMOTO did not participate
4 in any Conspiracy.

5 Chapter III. Concerning HASHIMOTO in Appendix E
6 of the Indictment.

7 1. Attached to the Army General Staff.

8 2. Retirement from Army.

9 3. Author of "Declarations of HASHIMOTO Kingoro."

10 4. Re-entered the Army.

11 5. Commanded an Artillery Regiment at the
12 Rape of Nanking.

13 6. In command of Japanese Forces which shelled
14 the "Ladybird" and the "Panay."

15 7. Author of a large number of books, articles
16 in the magazine "Taiyo Dai Nippon" and other publi-
17 cations and public speeches, all advocating aggressive
18 warfare.

19 8. Member of a number of societies for the
20 instigation of army control over politics and further-
21 ance of aggressive warfare.

22 9. Promotor of a number of plots designed to
23 remove politicians and officers whom he did not
24 consider sufficiently aggressive.
25

10. Founder of the I.R.A.A.

11. Elected to the Lower House of the Diet.

Chapter IV. Refutation to Prosecution's Summation.

1. General Argument.

a. Conspiracy.

b. Misinterpretation of evidence and
Misconception of facts.

2. Matters pertaining to HASHIMOTO.

a. Berlin Talk.

b. Caucasus Report.

c. Exhibit 177.

d. KIDO's Diary and TANAKA's Testimony.

e. Cherry Blossom Society.

f. Testimony of FUJITA Isamu.

g. Leading Members of Cherry Blossom Society.

h. March Incident.

i. Mukden Incident.

j. October Incident.

k. The Ladybird Incident.

l. Books, Articles and Speeches.

m. Associations.

n. Murder Suspect.

o. No Evidence is shown in the Conclusion
of the Summation.

p. It is not murder.

q. Atrocities.

3. Matters pertaining to other Defendants.

a. Accused ARAKI.

b. Accused HIROTA.

c. Accused ITAGAKI.

d. Accused KOISO.

e. Accused MATSUI.

f. Accused MINAMI.

DETAILED ARGUMENT

Chapter I. Manchuria.

1. "Sakurakai" (Cherry Blossom Society).

2. March Incident.

3. October Incident.

4. 5-15 Incident, etc.

5. Mukden Incident.

6. Foundation of Manchukuo, etc.

Chapter II. China.

1. Marco Polo Bridge Incident.

2. The "Ladybird" Incident.

a. Errors in point of fact.

b. Responsibility for bombardment.

3. Atrocities in Nanking, Kwangtung, Hankao, etc.

1 Chapter III. Soviet Union.

- 2 1. Caucasus Report.
3 2. Berlin Talk.

4 Chapter IV. Associations.

- 5 1. Imperial Rule Assistance Association.
6 2. Imperial Rule Assistance Man's Association.
7 3. Imperial Rule Assistance Political Association.
8 4. Japan Youth's Party.
9 5. Dai Nippon Sekiseikai.
10 6. Sakurakai (Cherry Blossom Society).

11 Chapter V. Books, Articles and Speeches.

- 12 1. Books.
13 2. Articles.
14 3. Speeches.

15 CONCLUSION

16 APPENDIX

17 Reason for Objection on Dr. TAKAYANAGI's
18 "Argument on Law".

19 SUMMATION FOR THE ACCUSED HASHIMOTO, KINGORO.

20 INTRODUCTION

21 The Indictment charges the accused HASHIMOTO
22 Kingoro as follows:

23 HASHIMOTO participated as leader, organizer,
24 instigator or accomplice in the formation or execu-
25 tion of common plans or conspiracies, as set out in

1 Counts 1-5; planned and prepared wars of aggression
2 and wars in violation of international law, treaties,
3 agreements and assurances, as set out in Counts 6-17;
4 initiated wars of aggression and wars in violation of
5 international law, treaties, agreements and assurances,
6 as set out in Counts 18 and 19; waged wars of aggres-
7 sion and wars in violation of international law,
8 treaties, agreements and assurances, as set out in
9 Counts 27-32 and Count 34; participated as leader,
10 organizer, instigator or accomplice in the formation
11 and execution of common plans or conspiracies to
12 commit murder and, by unlawfully ordering, causing
13 and permitting the armed forces of Japan to attack
14 the cities of Nanking, Kwantung and Hankao in breach
15 of treaties with the Republic of China and to slaughter
16 the inhabitants contrary to international law, unlaw-
17 fully killed and murdered large numbers of people,
18 is set out in Counts 44-47; and participated as
19 leader, organizer, instigator or accomplice in the
20 formation or execution of common plans or conspiracies
21 to commit conventional war crimes and crimes against
22 humanity, as set out in Counts 53-57.
23

24 However, the evidence offered by the prose-
25 cution is far from being adequate and sufficient to

1 support the charges. On the contrary, some of the
2 evidence adduced by the prosecution shows the inno-
3 cence of the accused.

4 On the other hand, the defense evidence in
5 the general phase as well as in HASHIMOTO's individual
6 phase has conclusively shown that the accused
7 HASHIMOTO is free from all the charges in the Counts
8 in which he is indicted.

9 Under such circumstances, the summation for
10 HASHIMOTO will be as brief as possible.
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GENERAL ARGUMENT

Chapter I

Serious Fallacies in the Indictment

1. Transition of Political Power.

As the accused KIDO emphasizes in his affidavit,¹ for a long period since 1928 the political power of Japan was in the hands of MAKINO Nobuaki, Lord Keeper of the Privy Seal, and SAIONJI Kimmochi, the "Genro" or Elder Statesman. Unless patronized by both of them it was absolutely impossible, in fact, for anybody to be Prime Minister, however excellent and able he might be.

According to the KIDO affidavit,² and his testimony,³ behind Mr. SAIONJI there were two men who had a strong influence upon him in deciding a matter. These were Messrs. KONOYE Fumimaro and HARADA Kumao. Behind Mr. MAKINO, too, there was one who had a similar influence upon him. This was nobody but Mr. KIDO, Koichi, who is now in the dock. Under these circumstances, said KONOYE, HARADA, and KIDO used to meet together and discussed political matters, although at that time they were not in any direct official position to do so.⁴

The next sentence has been corrected as

1. Ex. 3340, tr. 130724, 30821

2. Ex. 3340, tr. 30719, 30722, 30732, 30733

3. Tr. 31,541

4. Tr. 30,774, 30,733, 30,734, 30,723, 30,724

follows: Consequently, all those who aspired to be-
 1 come Premier or a State Minister competed with each
 2 other to be the first to enter the grace of these three
 3 men and supply them with every kind of information.
 4 The above-mentioned points are repeatedly testified to
 5 by the accused KIDO in his affidavit.⁵

6 Those important persons who, according to
 7 the KIDO affidavit⁶ and his testimony,⁷ used to meet
 8 Messrs. KONOYE, HARADA, and KIDO at parties or on
 9 various other occasions and who used to exchange in-
 10 formation with them concerning political affairs, we
 11 may mention the following names: SUZUKI Teichi,
 12 SHIGEMITSU Memoru, SHIRATORI Toshio. INUKAI Ken, ARIYA
 13 Rainei, SAKAI Tadamasa, OKABE Nagakage. Except the
 14 Accused SUZUKI, these men were neither army nor naval
 15 officers. Most of them belonged either to a privileged
 16 class called "Peers" or to a special category of diplo-
 17 mats. Even the only exception, the accused SUZUKI,
 18 later retired from the active service of the army and
 19 converted himself, just as he had long desired, into
 20 a politician. Of the above-mentioned people, Messrs.
 21 SUZUKI, SHIGEMITSU, and SHIRATORI are the accused in
 22 this trial.
 23

24 5. Ex. 3340, tr. 30,736, 30,770, 30,782
 25 6. Ex. 3340, tr. 30,734, 30,736, 30,737, 3040, 30,772
 Tr. 30,743, 30,754, 30,759, 30,760, 30,768, 30,770,
 30,800, 30,894

7. Tr. 31,297. 31,298

Since the time the First KONOYE⁸ Cabinet was
1 formed in 1938, there was, generally speaking, no
2 cabinet which did not include at least one of the
3 above-mentioned people. For the sake of illustration
4 let us refer to the Table of Cabinets⁸ which was pre-
5 sented by Mr. Blewett. In the First KONOYE Cabinet
6 we find Messrs. KONOYE, KIDO and ARIMA. In the FIRA-
7 NUMA Cabinet, Messrs. KIDO and KONOYE. In the ABE
8 Cabinet, Mr. SAKAI. In the Second and the Third
9 KONOYE Cabinet, Messrs. KONOYE and SUZUKI. It is
10 further remarkable that the TOJO Cabinet included
11 Messrs. SHIGEMITSU, SUZUKI and OKAWA, among whom Mr.
12 SHIGEMITSU retained his office in the succeeding
13 KOISO Cabinet.
14

15 In short, at first the situation was such
16 that whoever wished to become premier had to win the
17 favor of Messrs. SAIONJI, MAKINO, KONOYE, HARADA,
18 and KIDO. Afterwards, however, this situation was
19 changed owing to the retirement of Mr. MAKINO and the
20 death of Mr. SAIONJI. From that time on it became
21 necessary to the formation of a cabinet that it pick
22 up one or a few members out of the above-mentioned
23 group of peers and diplomats who used to hold meetings,
24 8. Tr. 2344, tr. 17,698
25

at which Messrs. KONOYE and KIDO took the lead.

1 In this way the center of Japan's political
2 power shifted from the hands of Messrs. SAIONJI and
3 MAKINO into those of Messrs. KONOYE and KIDO. This
4 transition of power affected the procedure followed
5 on the occasion of a cabinet change in the following
6 way. After the death of Mr. SAIONJI and the retirement
7 of Mr. MAKINO the choice of a new premier was decided
8 upon by a group of "Jushin," or Senior Statesmen, as
9 they were called, headed by Mr. KONOYE and consist-
10 ing of Messrs. OKADA Keisuke, YONAI Mitsumasa, TAKATSUKI
11 Reijiro, ABE Nobuyuki -- all of whom have testified
12 before this Tribunal -- and others, and this decision
13 was then recommended to the Throne by Mr. KIDO, the
14 Lord Keeper of the Privy Seal. In this way the Cabinet
15 was formed.
16

17 The accused KIDO's affidavit⁹ and his testi-
18 mony show¹⁰ this point very clearly. Thus the helm of
19 the state at that time was completely in the hands of
20 the accused KIDO as well as the members of the so-called
21 "Jushin" group. As far as the political power was con-
22 cerned, the almighty power of these people was unques-
23 tionably established.
24

25 9. Ex. 3340, tr. 30,902, 30,903, 31,082, 31,122, 30,787,
Tr. 30,937, 30,972, 30,973, 31,102.
10. Tr. 31,334.

In this connection the point which I wish
 1 to emphasize particularly is that no army or naval
 2 officer on the active service was to be found among
 3 these people who thus monopolized the almighty power
 4 in respect to the Political Power.

5 According to the affidavit¹¹ and the testi-
 6 mony¹² of the accused KIDO, at the time the Third
 7 KONOVE Cabinet collapsed the question whether the
 8 next cabinet be entrusted to the accused TOJO or to
 9 Admiral OIKAWA was decided by the accused KIDO's advice
 10 only.

11 and further, according to the accused KIDO's
 12 testimony¹³ he and Mr. KONOVE at last went so far as
 13 to interfere in the choice of the War Minister.

14 Thus, the politics of Japan was being carried
 15 in ways of aforementioned favoritism, while the Imperial
 16 Diet as well as the general public, government officials
 17 and the members of the army and navy, had no knowledge
 18 of it.

19 It will be absolutely impossible for us to
 20 determine the responsibility for the war without refer-
 21 ence to the transition of Japan's political power as
 22 stated above.

23
 24 2. The Three Major Events Have No Connection

- 25
 11. Ex. 3340, Tr. 30,986, 31,011
 12. Tr. 31,606, 31,601
 13. Tr. 31,338, 30,882, 30,883

1 In Japan there existed nothing which might
2 be called a "military clique." This point has been
3 conclusively proven by the accused TOJO in his affi-
4 davit.¹⁴

5 As stated above, the helm of the state re-
6 mained for a long time in the hands of Messrs. MAKINO
7 and SAIONJI, and later shifted to those of Messrs.
8 KONOVE and KIDO as well as a group of the so-called
9 "Jushin". It was of course quite impossible for an
10 army or naval officer to secure political power for him-
11 self. In other words, there was no room for a rise of
12 anything like a military clique.

13 The prosecution alleges that "In Japan there
14 was a group called 'Military Clique', which, advocating
15 the principle of aggression, secured despotic domina-
16 tion over the politics of Japan." The reason why the
17 prosecution has failed to prove the existence of the
18 alleged military clique was because there was no exist-
19 ence of a military clique as we have shown in the
20 above. It is also for the same reason that the prosecu-
21 tion has not been able to define military clique.
22 After all, it is clear that there was no such clique.

23 Further, in view of the above-mentioned transi-
24

tion of political power, there is no room for doubt that
1 there was and there could not have been any series of
2 conspiracies in Japan as is alleged by the prosecution.
3 The Japanese politics was being steered freely by the
4 whim of the small group of men who held the actual
5 powers. Thus, it was impossible to have a continuous
6 line of conspiracy, if there was any, other than
7 these persons, even if any other person had ever made
8 an attempt.

9
10 The prosecution regards the Manchurian and
11 China Incidents and the Pacific War as a consistent
12 series of events. In order to have these events to
13 form one consistent series, something was necessary to
14 connect them with each other. It seems that in search
15 of such a common connecting factor the prosecution in-
16 vented the conception of military clique. That is the
17 grave fallacy.

18 We now entrust the Tribunal to direct its
19 attention to the transition of power in Japan during
20 the past twenty years. Inconsistency in policies has
21 characterized the politics of Japan during this period.
22 The attitude of the government has always been waver-
23 ing between active and passive policies and between
24 armament expansion and armament reduction. This was
25 because of the existence of the privileged classes

1 and the political batons were given and taken freely
2 by the will of these privileged class people. If a
3 military clique had really existed, there would have
4 been some constant and firmly established principle.
5 In reality, however, such was no the case.

6 If the above-mentioned three major events
7 had been a consistent series of actions planned and
8 executed by a "military clique," there would have
9 been some constant factor common to the planning and
10 preparation of the Manchurian Incident with that of
11 the China Incident and the China Incident with the
12 Pacific War, and connecting each of these events with
13 each other in every respect. Such continuity in
14 planning would have been necessary above all in respect
15 to military operation. There is no evidence, however,
16 that proves this point. This is simply because such
17 were not the true circumstances. It is also clear
18 that there was no consistent conspiracy, and there is
19 no evidence offered to prove its existence.

20 Further, the point that the three major
21 events were not a series of actions connected with
22 each other has been proven beyond doubt by witness
23 TADA, Shun, former member of the General Staff, who was
24 for many years in charge of operational plans.¹⁵
25

15. Tr. 3386, 3388, 3389

Therefore, we must first recognize that
1 each of the three major events broke out from inde-
2 pendent causes, and then go on to inquire into these
3 causes.

4 3. Mistaken Judgment of the Accused KIDO

5 If the Indictment is based upon the KIDO
6 Diary or the HARADA Memoir, it must contain very serious
7 errors.

8 For the most part the diary and the memoir
9 consist of titbits of information which were brought
10 in by those who used to talk with Messrs. KIDO or
11 HARADA and which the authors indiscriminately scribbled
12 down as they reached their knowledge.

13 Moreover, the accused KIDO himself admitted
14 in his testimony ¹⁶ that he had no special staff for
15 the collection of information. The same applies also
16 to Mr. HARADA.

17 It is very easy to understand that the news-
18 mongers were prone to pick up and color the news so
19 as to render the situation favorable for themselves,
20 hoping thereby to win a high position of the state.
21 At any rate, it is beyond question that both the Diary
22 and Memoir are medleys of unreliable information.

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24 16. Tr. 31,268
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In fact, the accused TOJO stated in court
 1 that the "KIDO Diary is mistaken." ¹⁷ The accused
 2 KOISO also testified that a "statement in the KIDO
 3 ¹⁸Diary ¹⁹ is contrary to the truth."

4 In his affidavit ²⁰ the accused KIDO said that
 5 "the March Incident in 1931 was the beginning which
 6 gave rise to a group in army to control the politics"
 7 and that "this information was given me by the accused
 8 SUZUKI and Major General NAGATA, Tetsuzan."

9 However, as is clear in the testimony of the
 10 accused ²¹HASHIMOTO, neither the accused SUZUKI nor
 11 Major General NAGATA took part in the March Incident.
 12 As it is a well known fact, the March Incident was
 13 nipped before its execution. Then, how could an out-
 14 sider know the nature of a miscarried plan? Strangely
 15 enough, however, the KIDO Diary states as if HASHIMOTO
 16 had planned "the occupation of the Army General Staff
 17 Office." ²² an idea which he never dreamed of. This is
 18 simply because the Diary is a mess of colored and ex-
 19 aggerated information.
 20

21 Especially, the accused KIDO states that he
 22 kept company with the accused SUZUKI merely because
 23 he wanted information. ²³ The accused SUZUKI states in

24 17. Tr. 36,715 21. Tr. 28,819
 25 18. Ex. 179-F 1927, 1928 22. Ex. 3340, tr. 30,739
 19. Tr. 32,281 23. Ex. 3340, tr. 30,736
 20. Ex. 3340, tr. 30,723

24
1 his affidavit, "At that time I was deeply interested
2 in politics." In fact, availing himself of his connec-
3 tion with Messrs. KONOYE and KIDO, he later started a
4 political career. ²⁵ It is therefore highly probable
5 that the information he brought in was more or less
6 biased by his own interests.

7 It is entirely due to the above circumstances
8 that the March Incident, which was really aimed at an
9 internal reform of Japan, was misunderstood and mis-
10 represented as if it were the outcome of the political
11 ambition of the army's desire to be an impellent force
12 in the politics.

13 The March Incident was the reformative move-
14 ment of purely domestic nature aimed at establishing a
15 cabinet under the premiership of General UGAKI Kazushige
16 as shown in General UGAKI's affidavit. ²⁶ General UGAKI
17 is, as he himself stated in his affidavit, a man who
18 "advocated armament reduction as well as economization
19 of military expenditure; who issued orders to cut down
20 army forces and succeeded in doing so; and who was
21 twice recommended for the post of "er Minister."

23 Returning to the question of the March Inci-

24 24. Ex. 3605, tr. 35,187
25 25. Ex. 3605, tr. 35,187
26 26. Ex. 163, tr. 1605

1 dent, the accused KIDO, looking over the past after
2 the termination of the Pacific War, entertained an
3 illusion, the March Incident was the beginning of the
4 aggression movements, basing it only on unreliable in-
5 formation without relying on facts.

6 What has been stated above in regard to the
7 KIDO Diary applies in the main to the HARADA Memoir,
8 too. The fact that even the accused KIDO, so closely
9 associated with Mr. HARADA, denies in his testimony²⁷
10 every passage of his conversation appearing in the
11 HARADA Memoir, is an eloquent proof of its unreliability.
12 Further, its inaccuracy has been shown by the accused
13 TOJO,²⁸ as well as the accused KOISO.²⁹ There are count-
14 less denials of the HARADA Memoir. Therefore we con-
15 sider it is unnecessary to go into any further argument
16 on the credibility of the HARADA Memoir.
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23 27. Tr. 31,426, 31,530
24 28. Tr. 36,656
25 29. Tr. 32,326, 32,406

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CHAPTER II

Accused HASHIMOTO did not Participate in
any Conspiracy.

In reply to our motion to dismiss Mr. Carr
of the prosecution alleged that "His main function in
this conspiracy was as a propagandist" and then
added that "If OKAWA was rather the man who provided
the ideas behind the conspiracy, HASHIMOTO was a
principal among those who popularized them."

However, what the prosecution offered in evi-
dence to support the charge were only some of HASHI-
MOTO's books and articles and nothing more. Further,
the prosecution has failed to prove the relation
between the accused HASHIMOTO and the thought of
Dr. OKAWA. The accused HASHIMOTO himself has clearly
stated in court that his ideas were not derived from
nor inspired by Dr. OKAWA.¹ The prosecution is
strongly stressing this very important point without
producing the evidence. The accused HASHIMOTO cannot
bear such absurdities.

According to the affidavit of the accused
HASHIMOTO² as well as that of witness OGAWA, Kiichiro,³

1. Tr. 28,805, 28,806, 28,807
2. Ex. 3195, Tr. 28,791-2.
3. Ex. 3193, Tr. 28,786

1 it is true that HASHIMOTO published his personal opin-
2 ions in books, and made speeches. However, he wrote
3 and spoke as a plain, unofficial citizen and without
4 any common plan or conspiracy with other people.

5 Like the amended Article I of the American
6 Constitution and other countries, the Article 29 of
7 the old constitution of Japan provided: "Any Japan-
8 ese subject enjoys the freedoms of speech, the press,
9 assembly and association within the scope of law."⁴

10 The accused HASHIMOTO's activities were quite up-
11 right and straightforward and within the legal scope
12 recognized by this Constitution. As shown by his
13 personal history,⁵ it is quite inconceivable that the
14 accused HASHIMOTO should have taken part in any of
15 the conspiracies alleged by the prosecution.
16

17 Entirely free from any pecuniary greed and
18 desire for fame, the accused HASHIMOTO is a man of
19 utmost frankness and uprightness who conceals
20 nothing and who tried anything which he considers
21 good. Therefore, he has always been kept away from
22 those who struggled for high positions in the govern-
23 ment by all sorts of flattery and treachery. This
24 is precisely the reason why he was dismissed from the
25

4. Ex. 68, Tr. 17,474
5. Ex. 105, Tr. 699

1 army in such a low rank as colonel. Further, inas-
2 much as he did not flatter influential and high-
3 ranking personages, he has had no opportunity to
4 make friends with any of the other accused. On the
5 other hand, this is also the reason why he was loved
6 and respected by pure-hearted young people. In other
7 words, the accused HASHIMOTO has gone his own way,
8 completely independent of those leaders who dominated
9 the nation in political, diplomatic, military, econ-
10 omic and cultural fields.

11 Concerning this point the accused HASHIMOTO
12 states in his affidavit as follows:

13 "I was never in any official position to
14 participate in any conspiracy, planning or prepara-
15 tion of the Manchurian and the China Incidents and the
16 Pacific War. Nor did I ever participate in any such
17 conspiracy, planning or preparation. Besides, I
18 have never been on friendly terms with any of the
19 defendants." ⁶ There is another proof that throws
20 further light upon this point. This is the testimony
21 of Lieutenant General TANAKA, Shinichiro. In reply
22 to a question put to him by Colonel Ivanov of the prose-
23 cution, he stated as follows: "Such opinions or views
24 are not reflected in the operations plans drawn up by
25 6. Ex. 3195 (Tr. 28,791)

1 the General Staff. HASHIMOTO, Kingoro, as far as I
2 know, is just one of the common people, a civilian,
3 and at that time had no position of leadership or
4 influence in matters of this kind."

5 The prosecution charges the accused HASHI-
6 MOTO with the crime of conspiracy without even show-
7 ing a fact or producing in evidence. Nothing would
8 be more absurd in our opinion than this attempt on
9 the part of the prosecution.

10 In view of the above we contend that, how-
11 ever wide and comprehensive we may interpret the term
12 conspiracy, the acts of the accused HASHIMOTO can
13 never fall within its scope.

14 Chapter III

15 Comments on Appendices to the Indictment.

16 Appendix A of the Indictment shows "the
17 principal matters and events upon which the prosecu-
18 tion will rely in support of the several Counts of
19 the Indictment in Group 1." Appendix B is a "list of
20 articles of treaties violated by Japan and incorpor-
21 ated in Groups 1 and 2." Appendix C is a "list of
22 official assurances violated by Japan and incorpor-
23 ated in Group 1." Appendix D sets out those incor-
24 porated in Group 3. Lastly, Appendix E gives a
25 "statement of individual responsibility for crimes

1 set out in the Indictment." Thus Appendix E enumer-
2 ates eleven positions which the accused HASHIMOTO
3 allegedly held during the period from 1928 to 1945.
4 Accordingly, we are going to show how each of these
5 charges is fundamentally mistaken.

6 1. Attached to the Army General Staff.

7 Appendix E alleges that HASHIMOTO was
8 "attached to the Army General Staff in 1933." How-
9 ever, no evidence has been offered to prove the fact.¹

10 As shown by HASHIMOTO's personal history,
11 on December 12, 1931, he was relegated to the 10th
12 Field Artillery Regiment, and on August 1, 1933, to
13 the 2nd Heavy Field Artillery Regiment. Therefore,
14 he was not at the General Staff in 1933. This sug-
15 gests the unreliability of the Indictment.

16 2. Retirement from the Army.

17 Appendix E states that HASHIMOTO retired
18 from the Army in February 1936. However, no evidence
19 has been offered to prove the fact. As shown by his
20 personal history, his retirement was in August and
21 not in February.² This is another illustration of
22 the inaccuracy of the Indictment.

23 3. Author of Declarations of HASHIMOTO,

- 24 1. Ex. 105, Tr. 699
25 2. Ex. 105, Tr. 699

Kingoro.

1 This point will be argued later in Chapter
2 V, Detailed Argument Part.

3 4. Reentered the Army.

4 Concerning this point there is no mistake.

5 5. Commanded an Artillery Regiment at the
6 Rape of Nanking.

7 Appendix E states that the accused HASHIMOTO
8 " Commanded an Artillery Regiment at the Rape of
9 Nanking."
10

11 However, no evidence has been introduced
12 to sustain the charge. The affidavit of HASHIMOTO,¹
13 excerpts from his book "The Inevitability of Renova-
14 tion"² and the affidavit of witness OBATA, minoru³
15 show that the accused HASHIMOTO was not in Nanking
16 at the time of the Rape nor at any other time.

17 6. In Command of Japanese Forces which
18 shelled the Ladybird and the Panay.

19 Appendix F states that HASHIMOTO was "in
20 command of Japanese forces which shelled the Ladybird
21 and the Panay. " The Ladybird Incident will be
22 argued later in Chapter II, Detailed Argument Part.
23

24 1. Ex. 3195, Tr. 28,796

25 2. Ex. 264, Tr. 3532

3. Ex. 3192, Tr. 28,772

1 Concerning the point that he commanded the Japanese
2 forces that shelled the Panay, no evidence has been
3 offered. His affidavit,⁴ his interrogation,⁵ the
4 affidavit of witness OBATA,⁶ Minoru, and the Report
5 of the U. S. Navy⁷ show that the leader of the
6 Japanese forces that shelled the Panay was not the
7 accused HASHIMOTO.

8 7. Author of a large number of books,
9 articles in the magazine "Taiya Dai Nippon" and
10 other publications and public speeches, all advocat-
11 ing aggressive warfare.

12 Appendix F states that the accused HASHIMOTO
13 was "the author of a number of articles advocating
14 aggressive warfare." However, there is not sufficient
15 proof that his writings and speeches advocated aggres-
16 sive war. This point will be argued at length in
17 the Chapter V, Detailed Argument Part.

18 8. Member of a number of Societies for the
19 Instigation of Army control over politics and fur-
20 therance of aggressive warfare.

21 Appendix E states: "He was a member of
22 Societies for the instigation of army control over
23 politics and furtherance of aggressive warfare."
24

25 4. Ex. 3195, Tr. 28,796 6. Ex. 3192, Tr. 28,772
5. Ex. 238, Tr. 3466 7. Ex. 263, Tr. 35,117

1 However, the prosecution has failed to prove the
2 charge. This point will be argued in detail in
3 Section 1, Chapter I and Chapter IV, Detailed Argu-
4 ment Part, which deal with the societies to which
5 he belonged.

6 9. Promoter of a number of plots designed
7 to remove politicians and officers whom he did not
8 consider sufficiently aggressive.

9 Appendix E states: "He was the promoter of
10 a number of plots designed to remove politicians and
11 officers whom he did not consider sufficiently
12 aggressive." However, the prosecution has failed to
13 prove this point. For contrary to its expectation,
14 the evidence has shown that the March and the Oc-
15 tober Incidents were nothing more than internal
16 movements. This point will also be argued in Chapter
17 I, Detailed Argument Part.

18 10. Founder of the IRAA.

19 Appendix F states: "He was one of the
20 founders of the Imperial Rule Assistance Association."
21 But, it is not true. Mr. GOTO, a prosecution wit-
22 ness, testified that the sole founder of the Associ-
23 ation was Prince KONOYE. He stated as follows
24 (page 1668):
25

". . . Prince KONOYE's ideal was to form an

1 organization with which all strata of the Japanese
2 people could be in agreement; that is to say, whether
3 they may be businessmen, politicians, educators, or
4 government officials -- of course, they would have
5 different political ideologies and different poli-
6 tical opinion, but this organization was to have
7 something with which all these people would feel
8 they had something in common."

9 11. Elected to the Lower House of the
10 Diet.

11 Appendix E states: "He was elected to the
12 Lower House of the Diet in 1942." This is quite
13 right.

14 But we contend that the following facts
15 which Appendix A refers to as events of major impor-
16 tance in 1942 have nothing to do with his membership
17 in the Diet:

18 a. Participation in and assistance to un-
19 lawful traffic in narcotics.

20 b. Conclusion of Japan-Gernany-Italy
21 military Alliance.

22 c. Aggression in the Netherlands East
23 Indies.

24 8. Ex. Tr. 1668
25

1 d. Aggression in Portuguese Timor.

2 The accused HASHIMOTO has no responsibility
3 for these events in his capacity as member of the
4 Lower House.

5 As is clear from the above, the accused
6 HASHIMOTO has no connection with any of the charges
7 set out in the Indictment and its Appendices.

8 Concerning the facts which the prosecution
9 erroneously considers to be connected with HASHI-
10 MOTO a more detailed argument will be made in the
11 Detailed Argument Part. In this way his guiltlessness
12 will be shown beyond any reasonable doubt.

14 CHAPTER IV

15 Refutation To Prosecution's Summation.

16 After finishing the writing of HASHIMOTO's
17 summation, we received the prosecution's summation
18 for HASHIMOTO. Considering the difficulties in
19 translation and processing, it was impossible to
20 write an entirely new summation over again. There-
21 fore, this chapter is devoted to an overall confuta-
22 tion of the argument, which will again be dealt with
23 more at length in the detailed argument part.
24

25

1. General Argument.

a. Conspiracy.

1
2 (1) In General Part -- 1-2 of its Argument
3 the prosecution alleges as follows: "In the law of
4 conspiracy it is not necessary to show that all parties
5 took part at the beginning. It is enough merely to
6 show that at the commencement of a conspiracy there
7 was a common plan among two or more conspirators....
8 As evidence has shown, the conspiracy came into being
9 as among certain army officers, in particular, among
10 staff members of the Kwantung Army."

11
12 Furthermore, the Indictment shows in Count 1
13 that "all the defendants together with divers other
14 persons, between 1 January 1928 and 2 September 1945,
15 participated as leaders, organizers, instigators or
16 accomplices in the formulation or execution of a common
17 plan or conspiracy."

18 Be it so, however, with reference to the
19 commencement of conspiracy, when, where, among whom
20 and what would the prosecution attempt to allege as
21 having been planned in common, a fact which is al-
22 most beyond our understanding.

23 In the general Part D-2 of its argument the
24 prosecution contends as follows: "The conspiracy
25 shall be analyzed an explanation given thereof in

1 four successive steps hereinafter: (1) its first step
2 in the conspiracy obtaining control of Manchuria ..."

3 Whereas, the D-15 explanation is given there-
4 to which is read: "The planning and execution of the
5 murder of Chang Tso-li is of the utmost importance
6 in this case. In the first place, it is the first
7 overt act in the conspiracy to carry out the ob-
8 jective of the conspiracy."

9 To summarize what has been stated above,
10 it seems that the prosecution's observation is that
11 between 1 January 1928 and Chang's death by an
12 explosion on 3 June 1928, there existed a common
13 plan among officers of the Staff of the Kwantung
14 Army to obtain control of Manchuria. However, no
15 evidence has been shown to prove this matter.

16 The prosecution who alleged that it sufficed
17 merely to show that at the commencement of a conspir-
18 acy there existed a common plan among two or more
19 conspirators -- fails to show in evidence with re-
20 gard to the above respect that there ever was a
21 common plan among more than two people.

22 Hereupon, it cannot but be said that the
23 alleged commencement of a conspiracy is only the
24 prosecution's arbitrary view without support of
25 any evidence.

1 (1) The accused HASHIMOTO was on duty in
2 Turkey in 1928 (Ex. 105, Tr. 699), whereas he could
3 not have possibly participated in the commencement of
4 such conspiracy.

5 (2) In the General Part K-3 of its argu-
6 ment the prosecution alleges as follows: "No military
7 man in the field has been charged with the crimes
8 pertaining to aggressive war merely because he car-
9 ried out military operations during the course of
10 an aggressive war being pursued by his government."

11 The accused HASHIMOTO, as military attache
12 to the Japanese Embassy in Turkey, sent a report on
13 15 November 1929 entitled "Circumstances in Caucasus
14 and its use-value in the light of propaganda" to
15 Deputy Chief of Staff, OKAMOTO, Renishiro. This was
16 nothing more than the performance of his rightful
17 duties.² In April 1931, the accused HASHIMOTO stated
18 his views to the following purport at the meeting on
19 "Circumstantial judgment" sponsored by the 2nd Depart-
20 ment of the Army General Staff Office:
21

22 "The Army General Staff must suggest to
23 the government to assume a decisive attitude in order
24 to solve pending problems in Manchuria extending to
25 several hundreds."³ This was also the performance

2. Ex. 3195, Tr. 28,792-3

3. Ex. 3195,
Tr. 28,700, 28,809

of his duty within his rightful power as Russian Sub-
1 Section Chief, 2nd Department Army General Staff.

2 The accused HASHIMOTO, on 12 December 1937,
3 when firing at Chinese vessels at Wuhu, carrying Chin-
4 ese troops, shelled the British gunboat the "Lady-
5 bird" in mistake owing to the thick fog peculiar to
6 the Yangtzekiang. However, the accident was incurred
7 in consequence of his performance of unavoidable
8 duties by order of the Army Commander YAMAGAWA.

9 The foregoing three actions are not of the
10 sort as to be charged with crimes of aggressive war,
11 as alleged by the prosecution.
12

13 (3) In the General Part D-2 of its argument
14 the prosecution alleges as follows: "The conspiracy
15 shall be explained by analyzing it in four successive
16 steps hereinafter: (a) The first step in the con-
17 spiracy obtaining control of Manchuria; (b) the
18 expansion of control and domination from Manchuria
19 to all the rest of China; (c) the preparation of
20 Japan for aggressive war internally and by alliances
21 with Axis Powers; (d) the further expansion of the
22 conspiracy into the rest of East Asia and the Pacific
23 and Indian Oceans by further aggressive wars."

24 4. Ex. 3192, Tr. 28,769; Ex. 2577, Tr. 21,909;
25 Ex. 3195, Tr. 28,796; Ex. 3498, Tr. 33,833.

1 The accused HASHIMOTO, after three year's
 2 stay in Europe returned to Japan in 1930. The one
 3 and only fact he gave thought to, on his way back,
 4 was the method for renovation of Japan.⁵

5 The accused HASHIMOTO in 1930 organized the
 6 "Sakurakai," a study society with the view of national
 7 renovation. The "Sakurakai" had not in the least any-
 8 thing to do with such as other than its objective.⁶

9 The accused HASHIMOTO, in 1931, plotted the
 10 so-called March Incident but gave it up owing to General
 11 UGAKI's change of mind. The March Incident was purely
 12 a national renovation movement and had no connections
 13 whatsoever with the Manchurian Incident nor with
 14 other external affairs.⁷

15 The accused HASHIMOTO, again in 1931, devised
 16 the so-called "October Incident" but was detained from
 17 action on account of General ARAKI's reproof. The
 18 October Incident was purely a national renovation
 19 movement and had no connection at all with the Man-
 20 churian Incident nor with other external affairs.⁸

- 22 5. Ex. 734A, Tr. 7647
 23 6. Ex. 183, Tr. 2188; Ex. 2424, Tr. 19,666;
 Ex. 3195, Tr. 28,793.
 24 7. Ex. 3195, Tr. 28,793-4; Ex. 3375, Tr. 32,209;
 Ex. 2424, Tr. 19,668, 1627, 1628, 28,810, 1423,
 25 1411.
 8. Ex. 3195, Tr. 28,795; Ex. 2424, Tr. 19,667-8;
 Ex. 3375, Tr. 32,213-4; Ex. 2584, 22117, 30323.

1 Thus, reflecting upon what has been stated,
2 there is not even a single act in all of those com-
3 mitted by the accused HASHIMOTO up to October 1930,
4 that comes under the category defined by the prose-
5 cution as conspiracy in the General Part D-2 of its
6 argument.

7 In other words, there exists no reason that
8 the defendant HASHIMOTO is chargeable with crimes of
9 aggressive war merely on the ground that he was con-
10 cerned in the Sakurakai, the March and the October
11 Incidents.

12 (4) In the General Part K-5 of its argument
13 the prosecution alleges as follows: "Although all of
14 the defendants are criminally responsible as formula-
15 tors of Japan's aggressive policies, the liabilities
16 of the individual defendants for any particular act
17 do not all rest on the same basis. . . . (3) those
18 defendants, who, although they had no duty or re-
19 sponsibility fixed by the law of Japan, have by their
20 acts and statement placed themselves on the policy-
21 making level and are therefore chargeable with respon-
22 sibility in fact."

23 Furthermore, in the General Part K-10 of its
24 argument the prosecution roughly classifies those coming
25 under the preceding clause (3) into two groups.

1 Group (1) "includes those governmental officials who
2 although not entrusted with policy-making power and
3 not subject to its concomitant responsibility, use
4 their office and their relation with their policy-
5 making superiors and colleagues to influence the
6 decision and action of those entrusted with the
7 power." ---- Group (2) "includes many persons not
8 officially connected with the government, such as
9 pressure groups and the trusted confidants of the
10 responsible official, who use their power to in-
11 fluence those with responsibility to make a decision
12 in a certain way."

13 After dividing them into two groups as stated
14 above, the prosecution gives the following explana-
15 tion: "It must also be remembered that few decisions
16 made by those ultimately in power are made without
17 the pressure of these governmentally non-responsible
18 individuals and groups. These people are more often
19 than not the real initiators of the policy ultimately
20 adopted by those in power, and it is their demands and
21 arguments, and unfortunately sometimes their threats,
22 unlawful inducements and acts of unlawful force which
23 bring about the adoption of a specific policy. In so
24 exercising their power and influence, they are par-
25 ticipating in the formulation of a national policy

1 and share in fact the responsibility for its adoption.
2 If the act they advocate and succeed in having exe-
3 cuted is a crime, they are liable for that crime
4 at least as instigators and accomplices."

5 The accused HASHIMOTO retired from military
6 service in August 1936 and became an ordinary civilian.
7 In August 1937 he was recalled to the active service
8 but left the service again in April 1939, when he
9 was discharged and returned to a civilian life. The
10 accused HASHIMOTO did never assume any official post,
11 during the above-mentioned two periods, except that
12 in the active service.⁹

13 Therefore, he never was, and no evidence to
14 that effect having been mentioned, one of those
15 "Governmental officials who use their office and
16 their relations with their policy-making superiors
17 and colleagues to influence the decision and action
18 of those entrusted with the power."

19 The accused HASHIMOTO has been a member of
20 two or three societies. However, as a single member
21 of the society, he, no more than the said societies,
22 never exercised power to influence those with respon-
23 sibility, whereby no such evidence has been produced
24 by the prosecution. Therefore, the accused does

25 9. Ex. 3195, p. 28791 Ex. 105, p. 699.

1 not come to be included in "pressure groups who use
2 their power to influence those with responsibility
3 to make a decision," nor is he one of "the trusted
4 confidants of the responsible official."¹⁰

5 Be it so then, there exists no reasonable
6 ground for including the accused HASHIMOTO in the
7 instigators and accomplices as alleged by the prose-
8 cution in the General Part K-10 of its argument.

9 (5) In the General Part K-1 of its argument
10 the prosecution divides the defendants into 7 cate-
11 gories including Prime Minister^{ship} and others.
12 Among them what we can reasonably conjecture is that
13 the accused's possibly being included in two categor-
14 ies, in one as "Army officer in the field" and the
15 other as a "Propagandist." The accused HASHIMOTO had
16 been an "army officer in the field" for an extremely
17 short period, during which time, however, he had no
18 more than been a military man observant to orders of
19 superiors. He did not ever commit crime of murder,
20 conventional war crimes, or any of those against
21 humanity.¹¹
22

23 Therefore, the accused is not chargeable
24 with punishment for the reason that he was an "army
25 officer in the field."

10. Ex. 3195, Tr. 28,791.

11. Ex. 3195, Tr. 28,796-7; Ex. 3192, Tr. 28,772.

1 The accused HASHIMOTO, during the period from
2 1936 to 1942, excepting that while he was being called
3 to service, had published 4 kinds of books, wrote
4 articles and delivered several speeches. However,
5 these were all made in his capacity as a plain
6 civilian, and not in the least in communication with
7 any other person.¹²

8 The accused HASHIMOTO, in accordance with
9 the freedom of speech and publication as assured by
10 Article 29 of the Japanese Constitution, made public
11 personal views of his own. The assurance of freedom
12 of speech and publication is known to be widely estab-
13 lished in a great number of countries as well as in
14 Japan. Such could respectively be found in the
15 United States Constitution; Amended Article 1,
16 Articles 10 and 11 of the French Declaration of Human
17 Rights; Article 14 of the USSR Constitution; Article
18 7 of the Netherlands Constitution; and Article 11 of
19 the Chinese Constitution.
20

21 I skip the next paragraph.

22 In order to charge the accused HASHIMOTO with
23 being a party to the conspiracy as a propagandist, it
24 is necessary to prove the fact that he acted in commu-
25 nication with the rest of the conspirators. However,

~~12. Ex. 3195, Tr. 28,791-2; Ex. 3193, Tr. 28,786.~~

1 the prosecution has failed to show any proof with
2 reference to the above mentioned communication of
3 ideas. In fact, it is impossible to prove such fact,
4 since in his case views were published individually
5 and utterly free from any communication as has been
6 stated in the foregoing. In other words, the accused
7 HASHIMOTO as a "propagandist" is also unchargeable
8 with the responsibility for taking part in the alleged
9 aggressive war.

10 (6) The prosecution's argument does not,
11 any of its part, consider actions by mistake, meetings
12 of amity and irrelevant items as crimes. In so much
13 as stated above, it can hardly be admitted that the
14 accused HASHIMOTO was a participator in the conspiracy
15 for aggressive war, with reference to the Ladybird
16 Incident, the Berlin Talk, and the Manchurian Inci-
17 dent.

18
19 ' b. Misinterpretation of evidence and
20 Misconception of facts.

21 (1) In General Part-D of its argument the
22 prosecution alleges that "according to TANAKA, Ryu-
23 kichi's statement CHO told TANAKA that one of the aims
24 of the establishment of this association (i.e. the
25 Sakurakai) was the solution of the manchurian prob-
len" and cites page 1963 of the TR as evidence.

1 According to the above evidence, however,
2 what CHO told TANAKA was merely that "the Manchurian
3 problem was taken up as a subject for discussion."
4 It does not show that its "solution was one of the
5 aims for which the association was established." No
6 doubt the prosecution is distorting the evidence.

7 (2) In General Part-D of its argument the
8 prosecution further alleges that "according to a
9 report of the Home Ministry, by 1930 this association
10 (i.e. the Sakurakai) had reached the conclusion that
11 national reform was necessary for the positive solu-
12 tion of the Manchurian-Mongolian problem," and cites
13 exhibit No. 183 as evidence.

14 According to the above evidence, what the
15 prosecution is citing as a personal and conjectural
16 opinion of Mr. TANAKA, Kiyoshi, which forms a part
17 of the report of the Home Ministry. Moreover, the
18 association referred to there is not the Sakurakai at
19 all but a group of some members of the Second Division
20 of the Army General Staff. Here again the prosecution
21 is distorting the evidence.

22 (3) In General Part-D of its argument the
23 prosecution alleges that "if the conspirators could
24 secure political power, they would be able to do any-
25 thing they wanted free from any restriction. There-

~~fore the conspirators formulated and initiated a~~
1 plan to secure political power in their hands."

2 This however is nothing more than a mere
3 conjecture which is not confirmed by evidence. No-
4 body is warranted to pervert a fact by mere con-
5 jecture.

6 (4) In General Part-D of its argument the
7 prosecution alleges that "HASHIMOTO mentioned on
8 examination also the name of NAGATA as a conspirator."
9 According to the above evidence, however, it is not
10 clear whether or not NAGATA was one.

11 (5) In General Part-D of its argument the
12 prosecution alleges that "the fact that there was a
13 plot and that in this plot HASHIMOTO played an import-
14 ant part was well known to KIDO as well as a group of
15 people encircling the Throne," and cites exhibit 179G,
16 page 1931 as evidence thereof.

17 However, the above source is based upon
18 a rumor which the accused KIDO heard from Mr. HARADA.
19 Therefore, it is clear that the allegation that such
20 facts were well known to a group of people encircling
21 the Throne is not based on evidence.

22 (6) In General Part-D of its Argument the
23 prosecution alleges that "OKAWA stated in his testi-
24 mony before the Tribunal that the Manchurian Incident
25

1 gave birth to the "March Incident" and cites (blank)

2 However, what is referred to in the above
3 evidence is not the "March Incident" but the "Man-
4 churian problem." This is another distortion of
5 evidence.

6 (7) In General Part-D of its Argument the
7 prosecution alleges that "in the fall of 1934 HASHIMOTO
8 told him (TANAKA, Ryukichi) about the "Manchurian Inci-
9 dent" and cites Tr. p. 1968-1978 as evidence.

10 However HASHIMOTO never met Mr. TANAKA in
11 the fall of 1934, as has been clearly testified to
12 by witness SUZUKI Kyo as well as by the accused
13 HASHIMOTO himself.¹³

14 Reference will again be made to this point in
15 Section 5, Chapter I of the Detailed Argument Part,
16 which deals with the Mukden Incident.

17 (8) In General Part-D of its Argument the
18 prosecution alleges that "Captain CHO told TANAKA
19 about the Manchurian Incident," and cites Tr. p. 2013-
20 2014 and 2017 as evidence thereof.

21 However, at the time the Mukden Incident broke
22 out Captain CHO was not in Tokyo nor in Manchuria but
23 in Peking (Ex. 3195, p. 28,793). Therefore, General
24

25 13. Ex. 3195, Tr. 28,795; Ex. 3194, Tr. 28,788-9
12-A. Ex. 2177A, Tr. 15,578

1 TANAKA's testimony is hearsay of hearsay, entirely
2 lacking in probative value.

3 (9) In General Part-D of its Argument the
4 prosecution alleges that "In 1934 OKAWA told TANAKA
5 that the incident of September 18 was the result of
6 his plan and that he was satisfied that a similar
7 plan had been prepared and was being carried out by
8 the Kwantung Army," and cites Tr. p. 1980-1984 as
9 evidence thereof.

10 However, on cross-examination by the defense
11 counsel, General TANAKA reversed and corrected his
12 above statement and said that "I never heard OKAWA
13 talking about the Manchurian Incident."¹⁴ Since the
14 correction was made we must rely on the corrected
15 statement.

16 (10) In General Part-D of its Argument the
17 prosecution alleges that "In 1931 SHIGETO and HASHI-
18 MOTO told witness FUJITA that active steps should be
19 taken in Manchuria" and cites Ex. 160, p. 1464 as evi-
20 dence thereof.

21 However, on cross-examination by the defense
22 counsel witness FUJITA admitted that his recollection
23 was not certain as to the above point.¹⁵

24
25 14. Tr. 2165
15. Tr. 1468-1471

1 (11) In General Part-D of its Argument the
2 prosecution alleges that "In October the conspirators,
3 unsatisfied with the policy of the Government which
4 they considered unfavorable for the execution of
5 their conspiracy, formulated another plan to secure
6 domination over the Government" and cites Exhibit
7 3195, p. 28,795.

8 However, exhibit 3195 just states that "for
9 the sake of an internal reform of the nation . . ."
10 and nothing more. The prosecution's contention is
11 due to a distortion of evidence.

12 (12) In General Part-D of its Argument the
13 prosecution alleges that "In his testimony in the
14 Tokyo Court of Appeal OKAWA stated that the WAKATSUKI
15 Cabinet was lukewarm in attitude and that the object
16 of this incident consisted in organizing a new
17 political party which would be powerful enough to
18 pull down this Cabinet and to solve important prob-
19 lems of the time" and cites exhibit 2177A, p. 15,585-7
20 as evidence thereof. In confutation of the accused
21 HASHIMOTO's statement as well as witness WACHI's
22 testimony that "Dr. OKAWA did not participate in the
23 October Incident," the prosecution further alleges
24 that "this evidence seems to be a belated trick by
25 which OKAWA attempts to avail himself of his present

mental state, whether feigned or unfeigned."

1 However, as is obvious from exhibit No. 2177A,
2 page 15,585, Mr. OKAWA does not say "the October
3 Incident was aimed at pulling down the WAKATSUKI
4 Cabinet." He says that "The Cabinet which was in
5 power at the time of the Mukden Incident was the
6 SHIDEHARA Interim Cabinet and the October Incident
7 was aimed at pulling down this Cabinet."
8

9 Had Mr. OKAWA taken part in the October
10 Incident he would not have mistaken the cabinet that
11 to be pulled down for the SHIDEHARA Interim Cabinet.
12 This proves that Mr. OKAWA took no part in the Oc-
13 tober Incident and that as early as at the time of
14 the above trial he was already in a morbid mental
15 state.

16 The prosecution, however, has wilfully dis-
17 torted the keypoint of exhibit 2177A and alleges that
18 the evidence showed that the Incident was aimed at
19 pulling down the WAKATSUKI Cabinet. Nothing could
20 be more absurd.
21

22 It is a matter for regret that the prosecu-
23 tion tries to incriminate the accused even by dis-
24 torting evidence.

25 (13) In General Part-D of its Argument the
prosecution refers to "information which Mr. TANAKA

1 got from Messrs. CHO and TATEKAWA concerning the
2 October Incident."

3 This is hearsay which is entirely devoid of
4 probative value and which General TANAKA got from
5 Messrs. CHO and TATEKAWA, both of whom are now dead
6 and cannot be summoned to testify. It has already
7 been shown (Chapter IV, b, (7)) that General TANAKA
8 is a skillful inventor of stories.

9 (14) In General Part-E of its Argument the
10 prosecution alleges that on December 11, 1937 in the
11 course of an anti-China blockade a Japanese artillery
12 troop, commanded by the accused HASHIMOTO, shelled
13 the Ladybird, British gunboat, and cites exhibit 258,
14 page 3466-7 as well as exhibit No. 2188, page 15,678
15 as evidence.
16

17 In General Part-G of its Argument the
18 prosecution further alleges that they shelled the
19 Panay and the Ladybird as well as other vessels.

20 There is, however, nothing in the above
21 evidence that supports the allegation that the act
22 was committed in the course of an anti-China block-
23 ade.

24 Further, the prosecution seems to have for-
25 gotten that we have proven that the shelling of the
Ladybird was an error due to thick fog. Reference

1 will again be made to this point in Chapter II, Sec.
2 of the Detailed Argument Part.

3 (15) In General Part-F of its Argument the
4 prosecution alleges that it has examined the part
5 which the Sakurakai played in connection with the
6 actions taken in Manchuria.

7 However, the prosecution has offered nothing
8 to support this point. In connection with the
9 actions taken in Manchuria the Sakurakai played no
10 part whatever. Therefore, it is quite natural that
11 the prosecution has failed to offer evidence.

12 Therefore, the above allegation of the
13 prosecution is nothing more than a mere conjecture.

14 (16) In General Part-F of its Argument
15 the prosecution alleges that the Army's plan of
16 1936 for propaganda and the use of spies provided
17 so as to facilitate the suppression of objection
18 to the government propaganda, and cites exhibit No.
19 161, page 1245-1251 as evidence. It further adds
20 that in accordance with this part of the plan the
21 Imperial Rule Assistance Association was organized
22 on October 10, 1940, and cites Tr. p. 1642.

23 However, as is obvious at first sight
24 exhibit No. 151 is a mere general plan drafted by
25 the Planning Section of the Natural Resources Bureau.

1 There is no proof that this plan was put into prac-
2 tice in its original form. Further, although, it is
3 true, the date of the organization of the Imperial
4 Rule Assistance Association is mentioned on page
5 1642 of the Court Record, there is no proof that
6 this association was organized in accordance with the
7 Draft General Plan prepared by the Planning Section
8 of the Natural Resources Bureau.

9 In short, this allegation is also a mere
10 conjectural statement unsupported by evidence.

11 (17) In General Part-H the prosecution
12 states on "HASHIMOTO's thesis on the Greater East
13 Asia Co-Prosperity Sphere."

14 On this point, we shall touch upon in Sec.
15 22, Chapter V, Detailed Argument Part.

16 (18) In General Part-H the prosecution in-
17 sists that defendant HASHIMOTO admitted the fact that
18 the destructive move against the Soviet Union had
19 been discussed at the Berlin Talk, but the prosecu-
20 tion gave no evidence. On the contrary, defendant
21 HASHIMOTO answers that he has no such memory. ¹⁶ The
22 prosecution has misinterpreted the evidence.
23

24 16. Tr. 28,799-28,800.
25 Tr. 28,839-28,840.

1 (19) In General Part-H the prosecution
2 asserts, "HASHIMOTO was ready to take the most
3 scandalous measure of the strategical and destructive
4 deeds and he was always a thoroughgoing and atrocious
5 enemy to the Soviet Union. That is to say, the
6 role as the principal propagandist of the theory
7 of the mutual hatred between races aimed at the
8 occupation of other nations' territories and the
9 massacre of the people there was his specialty," but
10 there is no evidence produced for it. The prosecu-
11 tion blames defendant HASHIMOTO for using violent
12 words. We firmly contend that non-evidence statements
13 are nothing but the prosecution's opinion.
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2. Matters pertaining to HASHIMOTO."

(a) Berlin Talk.

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2
3 The prosecution's summation in CC-14 asserts
4 that in April, 1929 defendant HASHIMOTO participated in
5 the conference held at Berlin and he proposed that
6 Mr. Trotzky and his sixty comrades who had been
7 residing in Turkey could be utilized for intelligence,
8 and that in case good spies were found, you had to buy
9 information from them at any cost, and thus it quoted
10 transcript 7658, exhibit 722; and transcript 33,889.
11 Exhibit 732 is a document called "Matters Concerning
12 Russia, Submitted by Conference of Military and Naval
13 Officers in Europe" and the prosecutor states that
14 defendant MATSUI affirmed this fact.¹ But defendant
15 MATSUI denies this fact² and, moreover, he testifies
16 to the effect that there is no fact whatsoever that he
17 exchanged such talks nor he formed such a document.³
18 Defendant HASHIMOTO also makes the same testimony.⁴

19
20 In exhibit 732-A there is no such detailed
21 fact as the prosecution asserts and also in the evidence
22 produced by the prosecution. There exists no testimony
23 whatsoever of the proposal which defendant HASHIMOTO is

24 1. T. 7639

25 2. Ex. 3498, T. 33,828

3. Ex. 3498, T. 33,827, 33,028. T.33,887, 33,889,
33,800.

4. T. 28,800

said to have made, as the prosecution asserts. The

1 prosecution attempts to recognize the fact, basing on
2 no evidence at all. This is a very rash practice. In
3 regard to this point, we again shall take it up in
4 section 2, Chapter 3, Detailed Argument Part.

5 b. Caucasus Report.

6 The Caucasus Report is taken up in CC-15
7 of the prosecution summation. Concerning this point
8 we shall state in detail in section 1, Chapter III,
9 Detailed Argument Part.

10 c. Exhibit No. 177.

11 In the summation CC-16 the prosecution avers
12 that "HASHIMOTO contemplated a plan of Japan's reforma-
13 tion on his way home from Europe and therefore he
14 planned a few methods to carry out his plan as soon
15 as he returned to his post in the Army General Staff.
16 Perhaps he may not say that the following results were
17 produced by these plans, only but as a matter of fact
18 the Manchurian Incident and other incidents broke out
19 one after another." And for this evidence it gave
20 exhibit 177, T. 1,918 - 1921. However, above is
21 misinterpretation of the evidence. That defendant
22 HASHIMOTO contemplated en route to Japan from Europe
23 is only the "plan of the Internal Reformation" as
24 the prosecution asserts, and what he projected after
25

1 returning home is also nothing but this "the Plan of
2 Internal Reformation." In spite of this, the various
3 affairs such as the Manchurian Incident, the Secession
4 from the League of Nations, etc., occurred successively
5 later. This is why defendant HASHIMOTO, in his book,
6 stated to the effect that it could not be said that the
7 successive outbreaks of the above various affairs had
8 been brought about as a result of his project on the
9 internal reformation, but there had been other reasons.
10 The prosecution, however, attempted to interpret this
11 sentence in such a way as the various affairs like the
12 Manchurian Incident and others had occurred due to
13 defendant HASHIMOTO's project. It is misinterpretation
14 of the evidence to judge merely through reading the
15 statement of exhibit 177 that defendant HASHIMOTO
16 planned and conspired on the external affairs like
17 the Manchurian Incident and others.

18 d. KIDO Diary and TANAKA's Testimony.

19 CC-17 of the prosecution summation states
20 that "KIDO records in his Diary on 7 August 1931 that
21 HASHIMOTO and SHIGEFUJI backed a group of recent
22 graduates from the Army Staff College in the study of
23 Manchurian and Mongolian problems. These problems
24 centered about the creation of a new regime, following
25 the killing of Marshal Chang Tso-lin, by getting rid
of the war lords in Manchuria and separating Manchuria

1 from the Nanking government." As evidence for it, it
2 quoted exhibit 179-A to -R. The said KIDO Diary of
3 August 7 was hearsay and was learned from Mr. HARADA.⁵
4 Defendant HASHIMOTO has testified that there was no
5 such fact.⁶

6 Next, as can immediately be made out if one
7 examines the KIDO Diary of October 15th⁷ saying
8 "Military circles are intending to set up a new regime
9 in Manchuria . . ." the fact that is written into the
10 said Diary is that which is entered as a hypothetic
11 personal opinion of a petty official called HAYASHI,
12 as he heard it. Besides, in the above opinion we can
13 find no description at all of the incident of Chang
14 "so-lin's death by bomb explosion and of the Nanking
15 Regime. Not to say anything about defendant HASHIMOTO
16 or the Sakurakai, nothing notable is being described.
17 In view of these facts the prosecution is reasoning
18 as if there were facts, fabricating a hearsay of an
19 information broker, a hypothetical opinion of a petty
20 official and matters without any attestation.

21 Further, in CC-17 of the summation, the
22 prosecution avers that "... the Japanese army took a

23 5. Ex. 179-C, T. 1926

24 6. Ex. 3195, T. 28,793

25 7. Ex. 179-R, T. 1,942

1 strong attitude ... and took the stand that armed
2 force should be resorted to in driving out the
3 Chinese forces and setting up a new regime under
4 Japanese control. Strong advocates of this procedure
5 were HASHIMOTO and Captain CHO, Isamu." And it cites
6 transcript 1960 for it. However, the above is TANAKA,
7 Ryukichi's opinion and no concrete fact has been given
8 for it. That TANAKA's testimony is worthless will be
9 dealt with later in Section 5, Chapter I, Detailed
10 Argument Part.

11 e. The purposes of Sakurakai.

12 In CC-18 the prosecution avers that "... the
13 purpose of the Sakurakai was ... to carry out an
14 internal revolution or renovation and to settle the
15 Manchurian problem ..." and has cited transcript page
16 1963. This is, however, said to be what General
17 TANAKA, Ryukichi had heard from the deceased Captain
18 CHO. We shall later give that General TANAKA's testimony
19 as worthless.

20
21 And, further it avers that in CC-18 "... These
22 purposes dovetailed into the plans of the army, which
23 desired a settlement of the Manchurian problem, bring
24 Manchuria under Japanese control, and, if harmony and
25 cooperation could be realized, to use this as a basis
for eventually freeing Asia from white domination and

1 bring about the ideal of Asia for the Asiatics,"
2 and cites exhibit 183. However, the evidence for the
3 assertion is what Mr. TANAKA, Ryukichi testified he
4 heard from defendant ITAGAKI at Port Arthur in June
5 1930, and the transcription of Mr. TANAKA, Kiyoshi's
6 opinion. Defendant ITAGAKI has testified that he
7 had nothing to do with the Sakurakai and defendant
8 HAYASHIMOTO, and never met Mr. TANAKA, Ryukichi at Port
9 Arthur in June 1930.⁸ We shall give this in section 1,
10 Chapter I, Detailed argument Part. Mr. TANAKA, Kiyoshi's
11 opinion is dogmatic and has no value.

12 Furthermore, the prosecution summation insists
13 in CC-18 that "... such renovation was to be carried
14 out by a 'grand coup d'etat', by overthrowing the govern-
15 ment and then setting up a new and renovated government
16 to cleanse politics and political administration, as
17 well as rally public opinion and efforts of the people
18 toward settlement of the Manchurian problem." It cites
19 transcript 1982 and 1983.

20 However, the above is the testimony said to be
21 what General TANAKA, Ryukichi heard from insane Mr.
22 OKAWA. We shall later give the reason of worthlessness
23 of General TANAKA's testimony.

24 And further states that "... The navy also had

25 8. Tr. 30,324

1 several officers active in its affairs." It gave T.
2 1962 for it. As the fact shows clearly, it is an
3 opinion of General TANAKA. The opinion is not the
4 evidence.

5 f. Testimony of Mr. FUJITA, Isamu.

6 In CC-19 the prosecution gives concerning
7 affidavit and testimony of Mr. FUJITA, Isamu. In Section
8 1-b, Chapter IV of the General Argument Part, we have
9 given that FUJITA's testimony is not correct.

10 g. Leading Members of the Sakurakai.

11 In CC-20 the prosecution states that "... the
12 purposes and objects of the Sakurakai were put to prac-
13 tical use in effecting one of its primary objects,
14 namely, the solution of the Manchurian problem, and in
15 this HASHIMOTO has a leading part . . . in movements
16 for renovation of the government and by their stimula-
17 tion and direction of a military-political movement in
18 Manchuria, which ultimately led to international con-
19 demnation of Japan by the League of Nations." It cites
20 exhibit 157, T. 1402-3.

21 However, such description as cited by the
22 prosecution does not exist in either exhibit 157
23 nor transcript 1402-3. Besides the prosecution witness
24 Mr. SPIMIZU, Yukino has made a testimony quite contrary
25 to the prosecution, saying, "... It is a fact that the

1 March Incident was a completely internal reformation
2 problem and there was not involved any meaning of invas-
3 ion at all..."⁹ This is another distortion of the
4 evidence by the prosecution.

5 h. The March Incident.

6 In CC-21 the prosecution takes up the March
7 Incident, and in CC-22 discusses the "dummy bombs".
8 As we have stated, the March Incident was a pure
9 internal political movement. This will be taken up
10 in detail in Section 2, Chapter I, Detailed Argument
11 Part.

12 i. The Mukden Incident.

13 In CC-23 the prosecution cites General TANAKA's
14 testimony and says that HASHIMOTO had relation with the
15 Manchurian Incident. We shall explain in detail in
16 Section 5, Chapter V, Detailed Argument Part, that
17 General TANAKA is telling a fabrication and that
18 defendant HASHIMOTO had nothing to do with the Manchur-
19 ian Incident.

20 j. The October Incident.

21 In CC-24 of the summation the prosecution cites,
22 among others, exhibit 2777-A, T. 15,585-7, transcript
23 2013 and T. 1973 for the October Incident. In referring
24 to exhibit 2177-A, T. 155,585-7, the prosecution alleges
25

9. T. 1421 to 1424

1 that OKAWA remarked that the objective of the October
2 Incident was the overthrow of the WAKATSUKI Cabinet.

3 If your Honors please, we would like to call
4 your attention to line 5 and to lines 22 to 24 in the
5 transcript, page 15,585, where appears OKAWA's state-
6 ment saying that, "... The Cabinet at that time, as
7 you know, was the SHIDEHARA Interim Cabinet ... the aim
8 of the October Incident was, generally speaking, to
9 crush them ..." If OKAWA had been one of the partic-
10 ipants in the October Incident he should have known
11 that the subversion of the WAKATSUKI Cabinet was the
12 aim of the Incident, instead of the SHIDEHARA Interim
13 Cabinet. In actuality, he was in error when he made
14 such a statement. This is immovable evidence for the
15 fact that OKAWA had no concern with the October Incident.
16 Then, why did he say so? The sole answer is: he was
17 just insane. If not, whether he took part in the
18 Incident or not, he would not have made such an error
19 in such a well-known fact. It was indeed a natural
20 course for him because he later became and was diagnosed
21 as a lunatic.

22 The prosecution, intentionally changing his
23 words, alleges that the Incident aimed at the overthrow
24 of the WAKATSUKI Cabinet, thus attempting to make
25 OKAWA's statement as reasonable as possible in the
situation at the time of the Incident. We can not under-

1 stand why the prosecution has to distort the evidence
2 and make desperate efforts to connect defendant HASHI-
3 MOTO with the Mukden Incident. We are astonished to
4 discover that the evidence of the prosecution for its
5 case is so weak.

6 The testimony of witness TANAKA, Ryukichi
7 which appears in transcript 2013 is based on his inform-
8 ation heard from the late Lieutenant General TATEKAWA.
9 His testimony appearing in transcript 1973 is also
10 what he heard from the deceased Captain CHO. As to the
11 worthlessness of these testimonies, we shall take them
12 up later collectively.

13 k. The Ladvbird Incident.

14 The prosecution refers to the Ladvbird Incident
15 in CC-26 of its summation, and cites exhibits 2521, 2522,
16 and 2523 as evidence.

17 None of these exhibits has any concern with
18 the Incident of the Ladvbird, although they are related
19 to that of the Panay.

20 The argument of the prosecution emphasizes
21 that the Ladvbird Incident occurred not by accident.
22 In our submission this is the misinterpretation of
23 evidence on the part of the prosecution. Concerning
24 the Ladvbird Incident, we shall take it up in detail
25 in Section 2, Chapter II, Detailed Argument Part.

1 l. Books, Articles and Speeches by
2 the Accused HASHIMOTO.

3 In the prosecution summation at CC-27, CC-28,
4 CC-29, CC-30, CC-31 and CC-32, the books, articles and
5 speeches by the accused HASHIMOTO are referred to. We
6 shall take up this point in detail under Sections 1, 2,
7 and 3, Chapter V, Detailed Argument Part.

8 n. Associations.

9 In the prosecution summation at CC-33 and CC-34
10 the Associations with which HASHIMOTO was connected are
11 referred to. This point will be taken up in detail in
12 Sections 1, 2, 4, and 5, Chapter IV, Detailed Argument
13 Part.

14 n. Revision is not Perjury.

15 In CC-35 the prosecution alleges that "HASHIMOTO
16 perjured himself when questioned by one of the prosecu-
17 tors prior to trial", and cites transcript 15,682-15,686.
18 However, in careful reading of the said evidence it will
19 show the accused HASHIMOTO has not perjured himself.
20 Being shown his own writings, the accused HASHIMOTO
21 was reminded of his ambiguity in his answer, which was
22 given previously when questioned, and he therefore
23 revised it.

24 o. No Evidence is Shown for the
25 Conclusion of the Summation.

 In the summation, CC-36, the following passage

1 is found, "...It can be said that HASHIMOTO directed
2 public opinion to violate such treaties, agreements
3 and assurances, and that his previous conduct fitted
4 into the character he assumed as one of the conspir-
5 ators to wage unlawful wars of aggression for the
6 purpose of military, naval, political and economic
7 domination by Japan."

8 But no evidence for this has been tendered.
9 This is only the prosecution's dogmatic opinion.

10 THE PRESIDENT: We will recess for fifteen
11 minutes.

12 (Whereupon, at 1445, a recess was
13 taken until 1500, after which the proceedings
14 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. HAYASHI.

4 MR. HAYASHI: Proceeding from the bottom of
5 page 66.

6 p. It is not Murder.

7 The Summation CC-38 cites the transcript,
8 page 28,772, and charges HASHIMOTO guilty of murder
9 as follows:

10 "The testimony of the defense witness, OBATA,
11 further shows that HASHIMOTO was guilty of murder, as
12 appears from the following:

13 "'14. Since one death had resulted from the
14 shelling, the Captain of the British ship asked us to
15 attend the funeral service. We sent one representa-
16 tive to this funeral service. This was held at the
17 public hall.'"

18 As has been proven, the shelling of the
19 Ladybird was through a mistake due to a dense fog.
20 Therefore, though one death resulted, it is not proper
21 to charge him as guilty of murder. A full account of
22 the Ladybird Incident, which happened by mistake, is
23 taken up in Section 2, Chapter II, Detailed Argument
24 Part.
25

q. Atrocities.

1 In the summation CC-43 the prosecution asserts
2 as follows: ". . . relating to murder and mistreat-
3 ment of POW and civilians . . . it can only be said
4 that by his inflammatory language in the incitement
5 of violence to bring about the much desired victory,
6 cruelty can well be said to be a by-product of the
7 campaign. . ." and cites no evidence for it. Again
8 this is nothing but the prosecution's dogmatic opinion.

9 3. Matters pertaining to other Defendants.

10 a. The accused ARAKI.

11 In its argument against the accused ARAKI
12 the prosecution alleges that this plot (the October
13 Incident) was aimed at pulling down the WAKATSUKI
14 Cabinet as well as establishing a new government
15 which would support the Manchurian Incident and cites
16 as evidence Court Record page 2012.

17 However, the above source is a statement of
18 General TANAKA, Ryukichi, who is, as has been shown
19 on many occasions, a notorious story teller. More-
20 over, this is based on hearsay from Mr. TATEKAWA,
21 who is dead. Therefore, this source is no doubt
22 entirely devoid of any probative value.

23 b. The Accused HIROTA.

24 (1) In its argument against the accused
25 HIROTA the prosecution alleges that HASHIMOTO, Kingoro

1 admitted that, at the order of General YANAGAWA, he
2 shelled the Ladybird and captured the same vessel while
3 on her way to the rescue of the Panay and cites as
4 evidence exhibit No. 258 and Court Record page 3466
5 as well as exhibit No. 2188, page 15,674.

6 However, there is nothing in exhibit No.
7 2188, page 15,674, which supports the prosecution's
8 allegation.

9 According to a note of Foreign Minister
10 HIROTA addressed to the British Ambassador as well
11 as a declaration of Britain which was handed over to
12 Mr. HIROTA¹⁰ the shelling of the Ladybird happened
13 in the early morning of December 12. The shelling
14 of the Panay happened, according to the investigation
15 report of the U. S. Navy, about 1338 hours on
16 December 12.¹¹

17 In view of all this, it is quite inconceivable
18 that the Ladybird was shelled and captured while on
19 her way to the rescue of the Panay. There can be no
20 doubt that the Panay Incident took place while the
21 Ladybird was being captured.

22 (2). In its argument against the accused
23 HIROTA the prosecution alleges that "although HIROTA
24 (10. Ex. 2527, Tr. 21367-8.
25 Ex. 2546, Tr. 21540-1.
(11. Ex. 263, Tr. 3521)

1 sent a note to the British Ambassador apologizing for
2 that Incident and stating that it was due to a mistake
3 and that Japan was ready to pay adequate indemnities
4 the excuse, given for those incidents (Ladybird
5 Incident, etc.) and saying they were mere unhappy
6 accidents, as has been shown by the above evidence is
7 to be entirely without ground." It further alleges
8 that HIROTA was undoubtedly aware of the falsehood
9 of his statement.

10 However, many proofs offered in evidence
11 have conclusively shown that the Ladybird Incident
12 was an error caused by thick fog. Reference will
13 again be made to this point in Section 2, Chapter II,
14 Detailed Argument Part.

15 In view of the above facts, it is clear that
16 the prosecution is distorting evidence and that the
17 conclusion it has reached is a mere conjecture.

18 c. The Accused ITAGAKI.

19 (1) In its argument against the accused
20 ITAGAKI the prosecution alleges that what the younger
21 officers were longing for was to occupy Manchuria,
22 to cut it off from China and to keep it for Japan for
23 the purpose of economic utilization and cites as
24 evidence transcript page 1976 and exhibit No. 245,
25 page 3016-7.

1 However, transcript page 1976, which is testi-
2 mony of General TANAKA, Ryukichi, purports that
3 HASHIMOTO said that it would not be advisable to occupy
4 Manchuria. The prosecution's allegation is quite con-
5 trary to the effect of the document. Moreover, that
6 General TANAKA's above-cited statement is not true is
7 obvious from the fact that on that day the accused
8 HASHIMOTO did not meet General TANAKA.¹²

9 Exhibit No. 245, which sets out witness
10 MORISHIMA, Norito's opinions, has nothing to do with
11 the accused HASHIMOTO.

12 Transcript page 23,016-7 is Witness HATTORI,
13 Takushiro's affidavit concerning the Nomohan Incident.

14 None of the above-cited documents supports
15 the prosecution's allegations. The prosecution is
16 trying to prove facts which are not supported by
17 evidence.

18 (2) In its argument against the accused
19 ITAGAKI the prosecution alleges that later, for the
20 achievement of this purpose (the annexation of Man-
21 churia) ITAGAKI, together with HASHIMOTO, DOHIHARA,
22 KOISO and others, took part in the formulation of a
23 plan to pull down the civilian government and cites
24 exhibit No. 2177-A, page 15,587.

25 (12. Ex. 3194, Tr. 28,788-9
 Ex. 3195, Tr. 28,795)

1 However, it has already been shown in detail
2 that Exhibit No. 2177-A is a statement which Mr. OKAWA
3 made after he became insane.

4 The March and the October Incident which were
5 planned by the accused HASHIMOTO were but movements
6 for an internal reform having nothing to do with the
7 accused ITAGAKI.¹³

8 d. The Accused KOISO.

9 (1) In its argument against the accused KOISO
10 the prosecution alleges that KOISO denied that he was
11 a member of the Sakurakai.

12 However, the accused KOISO could not have
13 been a member of the Sakurakai. The Sakurakai was an
14 association, organized in 1930, which consisted of
15 army officers below the rank of lieutenant colonel,¹⁴
16 whereas the accused KOISO was Major General at that
17 time.¹⁵ Therefore, the prosecution is distorting
18 evidence in alleging that he denied his membership
19 in that association.
20

21 (2) In its argument against the accused
22 KOISO the prosecution alleges that according to this
23 scheme (the March Incident) it was planned to appoint

24 (13. Ex. 3195, Tr. 28,793, 4, 5
25 Ex. 3375, Tr. 32,209, 32,213, 32,214
 Ex. 2424, Tr. 19,667, 19668, 30,322
 (14. Ex. 3195, Tr. 28,793; Ex. 2424, Tr. 19,666
 (15. Ex. 114, Tr. 733)

War Minister UGAKI and to concentrate the political
1 power into the hands of the military and cites as
2 evidence exhibit No. 2177-A, page 15,586 as well as
3 transcript page 32,282-3.

4 However, it has already been shown that
5 exhibit 2177-A is a statement which Mr. OKAWA made
6 after he became insane. Further, in transcript page
7 32,282, the part on which the prosecution relies,
8 the accused KOISO denies the point alleged by the
9 prosecution. Accordingly, here again the prosecution's
10 allegation is wholly untenable.

11 (3) In its argument against the accused
12 KOISO the prosecution alleges that "the planned
13 actions and adopted measures (the March Incident)
14 were . . . the participants . . . to solve the Man-
15 churian problem . . ." and cites transcript page
16 15,578.

17 (4) In its argument against the accused
18 KOISO the prosecution allege that although at first
19 HASHIMOTO had stated on interrogation that KOISO was
20 one of the formulators of the March and the October
21 Incident, he testified later on the witness stand that
22 KOISO was connected with the Incident only insofar
23 as he made efforts to restore the bombs and cites
24 transcript pages 28,807, 15,076-7.
25

01 This means nothing but that HASHIMOTO
02 corrected his former statement which was based on
03 inaccurate recollections.

04 e. The Accused MATSUI.

05 (1) In its argument MI-4 against the accused
06 MATSUI the prosecution refers to the Ladybird Incident.
07 With regard to this point it shall be taken up in
08 Section 2, Chapter II, Detailed Argument Part.

09 (2) In the argument MI-84 against the accused
10 MATSUI the prosecution refers to the Berlin talks.
11 As to this point we have already given an over-all
12 statement in Section 2, a, Chapter IV, General Argu-
13 ment Part. Further details shall be given in Section 2,
14 Chapter III, Detailed Argument Part.

15 f. The Accused MINAMI

16 (1) In its argument against the accused
17 MINAMI the prosecution alleges that MINAMI knew, or
18 ought to have know, that some of the members of the
19 Sakurakai represented the War Ministry and that the
20 object of the Sakurakai consisted in carrying out an
21 internal reform and solving the Manchurian problem.
22 It cites no evidence, however.

23 There was no member in the Sakurakai, who
24 represented the War Ministry. It is therefore natural
25 that the prosecution has failed to find any proof

~~supporting its allegation. Further, it has been shown~~
1 that the object of the association did not include
2 solution of the Manchurian problem.

3 Accordingly, it is quite impossible that the
4 accused MINAMI should have known such unreal facts.
5 The prosecution is relying on conjectures and presump-
6 tion.

7 (2) In its argument against the accused
8 MINAMI the prosecution citing exhibit No. 179, page
9 1926, as well as page 2003, alleges as follows:
10 "MINAMI knew, or ought to have known, that during the
11 period from July to October, 1931, a group of army
12 officers, headed by Lieutenant Colonel HASHIMOTO and
13 SHIGETO, gained power; that as a consequence it became
14 so very difficult for the military authorities to con-
15 trol this group that in the formulation of the budget
16 they encountered many obstacles; and that this group,
17 including General TATEKAWA, strongly insisted that
18 Japan could not be one of the biggest powers with suf-
19 ficient national defense capacity, unless she did not
20 secure the possession of Manchuria."
21

22 However, Exhibit No. 179 is the KIDO Diary,
23 which is a strange mixture of tidbits of rumors. In
24 particular, the part cited by the prosecution is the
25 opinion of Mr. HARADA, the so-called information broker,

1 which was recorded by the accused KIDO. This is totally
2 devoid of probative value.

3 Transcript page 2003 is the opinion of General
4 TANAKA, Ryukichi, who is a story-teller as shown before.

5 It is impossible that such unrealities should
6 have been known to HASHIMOTO or the accused MINAMI.
7 The prosecution's allegation is a mere conjecture.

8
9 CHAPTER I

10 MANCHURIAN PROBLEM

11 1. Sakura-Kai (Cherry Blossom Society)

12 The prosecutor presented as the evidence
13 of the accused HASHIMOTO's connection with the Man-
14 churian Incident, the record of the Bureau of Police
15 Affairs of the Home Ministry ^(a) in connection with the
16 Sakura-Kai and testimony of the prosecution witness
17 TANAKA, Ryukichi, with regard to the Sakura-Kai.

18 But Lieutenant Colonel TANAKA, Kiyoshi's
19 report, from which the Home Ministry's Record was
20 taken, is not more than his opinion. For instance,
21 it says in some parts, - - the judgment of the situa-
22 tion by the second section of the Army General Staff
23 in the 5th year of Showa (1930) was beginning to obtain

24
25 (a) Ex. 183, T. 2,188.

1 unprecedented decisions - - they have come to the
2 conclusion that - - it is inevitable that our nation
3 should first be reconstructed - -^(a)"

4 All these are the opinion based on supposition
5 and they are not fact. Therefore they have no proba-
6 tive value.

7 Also the testimony of the prosecution witness
8 TANAKA, Ryukichi, says, "It is said that, according
9 to the story of Captain CHO in Shanghai, the Sakura-Kai
10 acted for the solution of the Manchurian problem and
11 reorganization of the country from immediately after
12 the so-called March Incident." Also he says, "Accord-
13 ing to my subjective view, the center of the plan for
14 the Manchurian Incident in Japan was the members of
15 the so-called Sakura-Kai, and the activity revolved
16 around Lieutenant Colonel HASHIMOTO and Captain CHO,
17 Isamu." All these statements are not facts as they
18 are. The former is hearsay, and the later is a dog-
19 matic opinion. Neither of these has any probative
20 value. Herewith it is necessary to show the character,
21 purpose and activity of the Sakura-Kai. As mentioned
22 in the report of Lieutenant Colonel TANAKA, Kiyoshi,
23 which taken in the Police Affairs Bureau of Home Min-
24 istry Record, ". . . decided to establish a research

25 (a) T. 2,191

1 organization on the internal reorganization of the
 2 country. The name Cherry Society was given to this
 3 organization. The membership shall be limited to army
 4 officers -- with the rank of Lieutenant Colonel or
 5 below. . ." (a)

6 There was no constitution nor dues fixed for
 7 gathering. Nor was it a secret organization. So it
 8 did not conspire to exclude the officers and politicians
 9 who were not considered as sufficient aggressors.

10 The above facts are well testified by the
 11 affidavit of the witness WACHI, Takaji, and also (b)
 12 by the affidavit of the accused HASHIMOTO. (c) Accord-
 13 ingly, it never investigated the matters of Manchuria
 14 and other countries, and it had nothing to do with the
 15 Manchurian Incident and the Kwantung Army. No one of
 16 the Kwantung Army joined the meeting. The aforemen-
 17 tioned facts are also testified in the affidavit of
 18 the witness WACHI, Takaji, and the affidavit of the (d)
 19 accused HASHIMOTO. (e) According to the testimony of
 20 the accused ITAGAKI, (f) he did not know even the existence
 21 of the Sakura-Kai in the Kwantung Army to which he was
 22 attached at that time. The accused H.SHIMOTO testified
 23

- 24 (a) T. 2,189
 25 (b) Ex. 2424, T. 19,666
 (c) Ex. 3195, T. 28,793
 (d) Ex. 2424
 (e) Ex. 3195
 (f) T. 30,323

1 in his affidavit that "14. In April 1931 as chief
2 of the Russian Section of the Second Department of the
3 Army General Staff at the meeting for 'Estimation of
4 Situation' I advanced the following opinion, to-wit:
5 That Army General Headquarters should recommend that
6 the government take a firm attitude toward settling the
7 hundreds of pending questions in Manchuria. Other than
8 this, I had nothing to do with the Manchurian Incident
9 or the founding of Manchukuo.^(a) In reply to the cross-
10 examination of Prosecutor Tavenner, the accused
11 HASHIMOTO answered him, "at that time in Manchuria
12 repeated incidents were breaking out in which there
13 were threats to Japanese lives and property. The Jap-
14 anese residents' right to live and to engage in business
15 was threatened and our railway rights were violated.
16 The Japanese Foreign Office only protested once against
17 all these incidents and took the attitude of trying to
18 settle these incidents on the spot, so that finally
19 these incidents mounted up to total three hundred sev-
20 eral tens. Thereupon I advocated that it was the duty
21 of the General Staff to strongly urge the Government
22 to take a firm line toward the Central Government of
23 China and to carry out the negotiations with a very
24 firm attitude.^(b)
25

(a) Ex. 3195, T. 2,879-5-6

(b) T. 28,809

Major TANAKA, Kiyoshi misunderstood the above
1 fact.

2 As the witness WACHI, Takaji testified that
3 "Mr. TANAKA, Kiyoshi was not an important member of the
4 (a) Sakura-Kai" so it should be taken that he entertained
5 such erroneous thought carelessly.
6

7 With regard to valueless testimony of Mr.
8 TANAKA, Kyukichi I shall state all together later in
9 the part of Mukden Incident, Section 5, Chapter 1,
10 Detailed Argument Part.

11 2. The March Incident.

12 The prosecutor takes the accused HASHIMOTO
13 "as the promoter of many conspiracies for the purpose
14 of eliminating the politicians and the officers not
15 considered as sufficient aggressors," and he also
16 takes up the March Incident in order to make him one
17 of responsible group in the Mukden Incident.

18 The evidences presented by the prosecution on
19 these points are the trial record of Mr. OKAWA, the (b)
20 meritorious record of Mr. OKAWA, (c) letters of Mr. OKAWA, (d)
21 the gist of argument on OKAWA's case, (e) the testimony
22 of the prosecution witness SHIMIZU, Konosuke, the
23

- 24 (a) T. 19,685
25 (b) Ex. 2177-A, T. 15,556
(c) Ex. 2177-B, T. 15,591
(d) Ex. 163-2, T. 1,610
(e) Ex. 2231, T. 15,998

1 record of the Police Affairs Bureau of the Home Minis-
 2 (a) (b)
 3 try, and two excerpts of KIDO's Diary.

4 The part related to the accused HASHIMOTO
 5 in the trial record of Mr. OKAWA is only in the fol-
 6 lowing nature: Lieutenant Colonel HASHIMOTO, Kingoro
 7 "... told me that the upper class of the army was
 8 burning with indignation at the Diet and that such a
 9 Diet should be crushed. And they ask me to see General
 10 UGAKI to find out what his opinion was. Thus it was
 11 the plan to advance the first step toward the state
 12 reconstruction." (c) There is no mention whatsoever
 13 about the accused HASHIMOTO in the meritorious record
 14 of Mr. OKAWA, (d) nor in the letters of Mr. OKAWA, (e) and
 15 also in the gist of argument on OKAWA's case.

16 The Police Affairs Bureau of the Home Minis-
 17 (f) try Record as Major TANAKA, Kiyoshi neglected to
 18 ascertain the fact, contains the writing of a mistaken
 19 opinion. Thus it has no probative value. (g)

20 The mention made in the KIDO Diary is entire-
 21 ly different from facts except HASHIMOTO's participa-
 22 tion in the movement to bring about a cabinet change.

- 23 (a) Ex. 183
 24 (b) Ex. 179-C & F, T. 1,926-7
 25 (c) T. 15,581
 (d) Ex. 2178-B
 (e) Ex. 2231
 (f) Ex. 183
 (g) Ex. 179-C, T. 1,927

(a)
1 In the KIDO Diary it is written that Lieutenant
2 Colonel HASHIMOTO is behind the organization for
3 Manchurian and Mongolian problems research activated
4 by a group captains. However, the accused HASHIMOTO
5 testifies in his affidavit: (b)

6 "I did not form any research group on Manchu-
7 Mongolia issues nor did I join or back incognito any
8 such group. I have never even heard of the existence
9 of such a group." Still more, this part of the KIDO
10 Diary was abused by the accused TOJO as information
11 broker. It is hearsay from Mr. HARADA, Kumao. The
12 other part of the KIDO Diary is hearsay from Mr. AKIMA,
13 Rainei, one of his group members. Every one of them
14 lacks as an evidence.

15 The testimony of the prosecution witness,
16 Mr. SHIMIZU, Konosuke, contrary to expectation of the
17 prosecutor, is all for advantage of the accused
18 HASHIMOTO.

19 Now, it is necessary to show the motive, the
20 aim and the result of the March Incident. The March
21 Incident was a pure movement for the state reconstruc-
22 tion, and it had nothing to do with the Manchurian
23 Incident. Concerning the motive and the aim of the
24 March Incident, the prosecution witness, SHIMIZU, Konosuke
25

(a) Ex. 179-F, T. 1,928

(b) T. 28,793

1 testified that ". . . it was a pure movement for the
2 state reconstruction to push up statesmen of high
3 character to relieve the people who were in distress
4 as the political parties were corrupted and their poli-
5 tics in complicity with zaibatsu. It is a fact that
6 aggressive character was not included in the March
7 Incident; -- It purely aimed at internal reform." (a)

8 Also the prosecution witness, Mr. TOKUGAWA,
9 Yoshichika testified that ". . . at that time the in-
10 ter al situation in Japan was such that two political
11 parties were bitterly contesting and thereby the people
12 were suffering very much, and the main topic of dis-
13 cussion was how it would be good if really enlightened
14 politics can be carried out . . ." (b)

15 The accused HASHIMOTO testified in his affi-
16 davit that ". . . I participated in the so-called March
17 Incident plotted by Dr. OKAWA, Shumei, with the aim to
18 organize a cabinet headed by General UGAKI, Kazushige,
19 for the cause of national reform, but the plan was not
20 realized because of the General's disapproval. . . The
21 incident was not linked with the Manchurian Incident.

22 (c)
23 Mr. OKAWA once told me that he had a plan to make Gen-
24 eral UGAKI Prime Minister and through him to carry out

25 (a) T. 1,421-3
(b) T. 1,447
(c) T. 28,793-4

the renovation of the corrupted political parties; and
1 to this proposition I said, 'Yes, I am in complete
2 agreement with your views'. . ."^(a)

3 The accused KOISO testified in his affidavit
4 that: ". . .Dr. OKAWA and his followers resented cor-
5 rupt party politics and wanted to reform the internal
6 political system by giving birth to a cabinet under the
7 premiership of General UGAKI, who was then the War
8 Minister. Dr. OKAWA wanted General UGAKI to take an
9 active post . . . This was the so-called March Inci-
10 dent, and had no relation with the Manchurian Incident
11 to my knowledge."^(b)

12 Also the prosecution witness, UGAKI, Kazushige
13 was asked the following question: "May I understand
14 that the March Incident was a purely internal affair
15 and had no international meaning?" To this he answered:
16 "As you say, I believe that this Incident has nothing
17 whatsoever related with the affairs outside of the
18 country."^(c)

19
20 The witness Mr, WACHI, Takaji testified in
21 his affidavit that: "13. HASHIMOTO, Kingoro said
22 that the March Incident was a move which attempted to
23 form a cabinet under the leadership of General UGAKI,

24
25 (a) T. 28,810
(b) T. 32,209
(c) T. 1,627-8

1 Issei and to eliminate the corrupted politicians from
 2 the political parties." (a)

3 The witness ISHIHARA, Kanji testified in his
 4 affidavit that "none of these officers had any connec-
 5 tion with the so-called March Incident . . . I had no
 6 opportunity to have intimate talks with Colonel
 7 HASHIMOTO, Kingoro or Dr. OKAWA, Shumei before the
 8 Manchurian Incident." (b)

9 The accused ITAGAKI testified that: "I had
 10 absolutely no relation with the Manchurian Incident. . . ." (c)
 11 ". . . But the plan (March Incident) was not realized
 12 because of General's (UGAKI) disapproval." (d) This
 13 fact is clearly mentioned in the affidavit of the ac-
 14 cused HASHIMOTO, (e) in the affidavit of the witness Mr.
 15 WACHI, Takaji, (f) and also in the affidavit of the
 16 accused KOISO. (g)

17
 18
 19
 20
 21
 22 (a) T. 19,668

(b) T. 22,116

23 (c) T. 30,323

(d) T. 28,794

24 (e) T. 28,793-4

(f) Ex. 2424, T. 19,668

25 (g) Ex. 3375, T. 32,209

Mr. OKAWA, Shumei stated in his trial record
1 as follows: "This Manchurian Problem was the important
2 motive for the March Incident."^(a) By the evidences
3 enumerated above, the motive and the aim of the March
4 Incident are too obvious.

5 The personal opinion of Mr. OKAWA has no
6 relation whatsoever with the accused HASHIMOTO.

7
8 Furthermore, several years after the March
9 Incident Mr. OKAWA was tried for the May 15 Incident.
10 In spite of the fact that at the time of the March
11 Incident he did not say it had relation with the
12 Manchurian Incident, it is obvious, based on his
13 exaggeration, to make the May 15 Incident significant
14 by using such words first time at the trial held
15 after several years. Also in the next chapter ex-
16 plaining the October Incident we shall show that the
17 opinion of Mr. OKAWA was stated after his derangement
18 of mind.

19 Thus, by the aforementioned evidence, it is
20 clear and obvious that the March Incident was not
21 "an activity to eliminate the politicians and the
22 officers not considered as sufficient aggressors,"
23 and also it had no relation whatsoever with the
24 Manchurian Incident.

25 (a. Tr. 15,578.

3. The October Incident.

1 The Prosecution treats the so-called October
2 Incident in the same manner as in the case of the
3 March Incident. As evidence for it, the Prosecution
4 cites the trial record of Mr. OKAWA ^(a), the merit
5 record of Mr. OKAWA ^(b), the Police Affairs Bureau,
6 Home Ministry record, ^(c) the gist of argument on Mr.
7 OKAWA case and the testimony of the witness TANAKA,
8 Ryukichi. However, nothing is mentioned about the
9 so-called October Incident in the merit record of Mr.
10 OKAWA, the Police Affairs Bureau, Home Ministry record,
11 nor in the gist of argument on the OKAWA Case.
12

13 If we look up the trial record of Mr. OKAWA,
14 he states, among others, that "the cause of the October
15 Incident is related to the Manchurian Incident and
16 was started by destruction of the S.M.R. line at
17 Lukew-Chiao on September 18, 1931." The cabinet at
18 that time, as you know was the SHIDEHARA Interim
19 Cabinet" ^(d) He further states that ". . . General
20 ARAKI was not involved in the October Incident."
21

22 It is a well known fact in this Court that
23 Mr. OKAWA is confined in a lunatic asylum on account

- 24 (a. Ex. 2177-A
25 b. Ex. 2178
 c. Ex. 183
 d. Ex. 2177-A)

1 of his insanity. It can be clearly seen that his
2 mind was already affected when he made this statement.
3 Because the Second HAMAGUCHI Cabinet came into being
4 after the Provisional SHIDEHARA Interim Cabinet. It
5 was very well known fact even among the common
6 Japanese that after the fall of the Second HAMAGUCHI
7 Cabinet, the WAKATSUKI Cabinet was formed on April 14,
8 1931, and the Mukden Incident happened during the
9 existence of this Cabinet. Not only this, the October
10 Incident intended to have Lieutenant General ARAKI, a
11 man of high character, for its leader. On the con-
12 trary, the movement was stopped by his persuasion.
13 Thus, it is not possible to say definitely that General
14 ARAKI had no relation with the Incident in that sense.
15 There is no other way than to say that as long as
16 such clear facts are mistaken, Mr. OKAWA's statement
17 is a biased statement of a man of unbalanced mind.
18 Also, as he had no relation with the October Incident,
19 he had no way to be acquainted with the real situation.
20 He pretended to have known it. This is also a mani-
21 festation of his megalomania.
22

23 Thus this trial record of Mr. OKAWA utterly
24 lacks probative value as evidence for conviction.

25 We shall dwell more fully later at the
place of the Mukden Incident in Section 5, Chapter 1,

Detailed Argument Parts to show that the testimony of
1 the witness TANAKA, Ryukichi is a series of falsehoods.

2 Now it is necessary to show the motive, object,
3 and result of the October Incident. The October
4 Incident was a pure movement for an internal recon-
5 struction, and it had no relation whatsoever with the
6 Manchurian Incident. The accused HASHIMOTO testified
7 in his affidavit: "I thought up the so-called October
8 Incident in October 1931 to bring about a cabinet
9 headed by Lieutenant General ARAKI for the purpose
10 of national reform and urged him to accept. But, on
11 the contrary, he severely reprimanded me and at the
12 order of War Minister MINAMI I was arrested by the
13 Military Police. After 25 days heavy confinement I
14 was relegated to the position of a regimental officer
15 of the Himeji Regiment. This incident had no connec-
16 tion whatsoever with the Manchurian Incident. It was
17 first thought out in the course of a conversation with
18 Captain CHO, Isamu in the beginning of the same year
19 after he returned to Tokyo from Peking. It never
20 materialized. No civilians joined the October In-
21 cident. . . ."
22 (a)

23
24 In reply to an interrogation of Prosecutor
25 Tavenner, HASHIMOTO stated that ". . . In the March
(a, Tr. 28795)

1 Incident OKAWA and I were co-conspirators. However,
2 I began to feel that if civilians were let in on plots
3 such as these matters were always apt to leak out some-
4 where or another and that it would become very difficult
5 to carry out such a plot, and therefore we came to the
6 decision not to let any civilians at all in our
7 plans. . . ." (a)

8 The witness Mr. WACHI, Takaji who was punished
9 as one of the participators of the October Incident
10 together with the accused HASHIMOTO testified in his
11 affidavit as follows: ". . . I was reprimanded along
12 with HASHIMOTO, Kingoro and others on the charge of
13 the October Incident. HASHIMOTO was subjected to heavy
14 disciplinary confinement for twenty-five days and
15 relegated to the Himeji regiment. The aim of the
16 October Incident was to remove corrupt politicians
17 from the political parties and to recommend Lieutenant
18 General ARAKI, a man of unimpeachable character, to
19 head a new government. . . MINAMI ordered the military
20 police to arrest us so that further development of the
21 Incident was checked there. Consequently, the concrete
22 and practical method of its execution had not as yet
23 been considered. . . The motive of the October Incident
24 was based on the fact that both of the political
25

(a) Tr. 28,815)

1 parties Seiyukai and Minscito, were absorbed in party
2 interests as well as self-interests and never thought
3 of the hardship of the people. For these reasons, it
4 was a move to exclude Premier WAKATSUKI, Reijiro, who
5 was a typical example of the corrupt party politicians,
6 and there was no connection whatever with the Manchurian
7 Incident." (a)

8 Also the accused ARAKI testified in his
9 affidavit that: "On the occasion of the October Inci-
10 dent, I happened to have been asked by War Minister
11 MINAMI and Chief of General Staff KANAYA to subdue
12 the trouble." (b)

13 The accused MINAMI testified in his affidavit
14 that ". . . I was informed in the middle of October
15 that there were indications of possible disorder among
16 young officers at home. I had these elements immedi-
17 ately apprehended by the Gendarmerie and had the matter
18 properly dealt with." (c)

19
20 Furthermore, the accused KOISO testified in
21 his affidavit that "From what I learned in the course
22 of the disposal of the incident as part of my official
23 duty, it was the plan in October 1931 some young officers
24 of the General Staff, to effect a renovation of the

25 (a. Tr. 19,667-8
b. Tr. 28,126
c. Tr. 19,790)

1 domestic organization of Japan. Before the plan took
2 any concrete shape, being still in the stage of
3 occasional conferences, . . . The Minister of War
4 requested TOYAMA, Commander of the Gendarmerie, to
5 take measures to confine immediately and hold in-
6 communicado all the young officers concerned, who
7 were then confronted with their indiscretions, and
8 told to disband and discontinue such activity. This
9 put an end to the incident." (a)

10 The prosecution witness Mr. WAKATSUKI,
11 Reijiro to the following prosecution's question gave
12 the following answer:

13 "Q Does the witness recall that War Minister
14 MINAMI had ordered the Kempei-Tai or gendarmery to
15 arrest younger officers in the middle of October?
16 (b)

17 "A I have heard of this story."

18 Also the witness Mr. ISHIHARA, Kanji testi-
19 fied in his affidavit and says that, ". . . when the
20 so-called 'October Incident' took place the
21 forces in the field which were quietly striving to
22 do their duties. . . ." (c) The accused ITAGAKI
23 testified that he had absolutely no connection with

24 (a. Tr. 32,213-4

25 b. Tr. 1,567

c. Tr. 22,117)

(a)

the October Incident.

1 By the above evidences, the October Incident
2 was not a mischievous movement for the purpose of
3 eliminating the politicians and the officers not
4 considered as sufficiently aggressive. It is clear
5 that it had no relation whatsoever with the Mukden
6 Incident.

7 4. The 15th May Incident and Others.

8 After 1932, a number of domestic reform
9 movements were conducted in Japan. Some of them are
10 namely the 15th May, the "Ketsumeidan", and the
11 "Shinpoitai", and the 26th February Incidents.
12

13 The Defendant HASHIMOTO has no connection
14 with any of these Incidents. The prosecution does
15 not clarify that the Defendant HASHIMOTO has any con-
16 nection with the said Incidents, nor does it give
17 any evidence to show that the Incidents bear any
18 relationship with the March Incident or the October
19 Incident.

20 So there is no evidence produced as to the
21 Defendant HASHIMOTO being the promoter of many schemes
22 for the exclusion of statesmen and officers not
23 regarded as sufficiently aggressive.
24

25 (a. Tr. 30,323)

5. The Mukden Incident.

1 Thinking that the Mukden Incident was
2 planned and conducted by Japan, the prosecution
3 considers the defendant HASHIMOTO as being among the
4 conspiracies and cites the following evidences, namely,
5 Trial Record of OKAWA, ^(a) The Investigation of the
6 Special Contribution of Dr. Suma TOKAWA, ^(b) The
7 summary of Argument at the Court for OKAWA, ^(c) the
8 Police Affairs Bureau of the Home Ministry Record, ^(d)
9 the KIDO's Diary, ^(e) the testimonies of prosecution
10 witnesses TANAKA, Ryukichi and FUJITA, Isamu, and
11 the account of the defendant HASHIMOTO's decoration.
12 However, no concrete evidence of any description has
13 been given by the prosecution as to how the defendant
14 HASHIMOTO is related with the Mukden Incident.
15

16 Needless to say, the Mukden Incident ori-
17 ginated in the blowing up of the South Manchuria
18 Railway lines by the Regular Chinese Army. Then it
19 was followed by exercising our right for self-defense,
20 which was chiefly intended to protect the Japanese
21 residents.
22

23 (a. Ex. 2,177-A

24 b. Ex. 2,178-B

25 c. Ex. 2,231

d. Ex. 183, Tr. 2,188

e. Ex. 179-C & F)

1 This fact is fully shown in a part of the
2 Lytton Report titled the "Description of Several
3 Incidents which occurred on and after 18 September,
4 1931," which concludes: "The commission does not ex-
5 clude the hypothesis that the officers on the spot
6 may have thought they were acting in self-defense." (a)
7 So no further explanation may be needed. That fact
8 is also supported by testimonies of the witnesses
9 SHIMAMOTO, Masaichi, (b) and HIRATA, Yukihiro. (c)

10 Witness KATAKURA, Tadashi, who was at that
11 time a staff officer of the Kwantung Army, testified:
12 "Inquiry commission, General HONJO first said that
13 the doings of the Kwantung Army, had been by the ex-
14 ercise of right to self-defense."
15

16 As for the responsibility for the military
17 operations conducted at the time of the Mukden
18 Incident, HONJO, Shigeru, then Commander of the
19 Kwantung Army, clarified a point who should be respon-
20 sible for those operations, and said in his testimony:
21 "The railway explosion at the height of the anti-
22 Japanese movement led to the Manchurian Incident and
23 the Kwantung Army had no choice except to take action
24 from the standpoint of self-defense. No instructions

25 (a. Tr. 1,798
b. Tr. 19,481
c. Tr. 19284-5)

1 of any sort were received from the Government or
2 Military High Command. In leaving this world bearing
3 fully responsibility, I, hereby. . ." ^(a) Witness
4 ISHIWARA, Kanji, who was with General HONJO when he
5 made his testament, testifies in his affidavit: "When
6 I expressed my opinion as the operational officer to
7 General HONJO to that effect, he mediated a few
8 minutes with his eyes closed, and then, judging from
9 the general situation, he made a final decision,
10 saying resolutely, 'Yes, let it be done on my own
11 responsibility'. . ." ^(b)

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23 (a. Tr. 19,246
24 b. Tr. 22,119)
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1 Nothing has been produced by the prosecution
2 strong enough to rebut these clear evidences on the
3 point. The trial court record of OKAWA, ^{b.} as
4 previously described, presents an eccentric view
5 which was and is characteristic of OKAWA. Neither
6 the investigation on OKAWA's distinguished services
7 nor the Summary of Argument at the Court of Appeals
8 of OKAWA ^(c) gives anything in relation to the
9 defendant HASHIMOTO.

10 It has already been mentioned that the
11 Police Affairs Bureau of the Home Ministry record ^{d.}
12 is nothing but a copy of the false view given by
13 Major TANAKA, Kiyoshi, and that the FIDO's Diary ^{e.}
14 also is based on groundless hearsay. In addition,
15 these exhibits state nothing whatever about the
16 Mukden Incident.

17 According to the prosecution witness FUJITA,
18 Isamu, there shows no existence of any relations
19 between the Mukden Incident and the defendant
20 ^{f.}
21 HASHIMOTO.

22 The testimony of prosecution witness TANAKA,
23 Ryukichi, is completely false. He was in Shanghai at

24 b. Ex. 2177-A. ^{d. Ex. 183}
25 c. Ex. 2231. ^{e. Ex. 179-C & F.}

1 the time of the Mukden Incident. Therefore, his
2 testimony is nothing but mere hearsay. Moreover,
3 he said that he got information from TATEKAWA,
4 Yoshiji, and CHO, Isamu, both of whom are dead now,
5 and from OKAWA, Shumei, who has gone mad long after
6 the incident. At the time of the Mukden Incident,
7 CHO was in Peiping, not in Manchuria or in Tokyo.
8 This fact is testified in the affidavit of the
9 defendant HASHIMOTO.^a So, CHO cannot have been
10 informed of the real state of the Mukden Incident.
11 TANAKA may have figured that his false testimony
12 would not be uncovered if his information was from
13 dead or insane person.

14 Now, let us further show that witness
15 TANAKA, Ryukichi gave completely false testimony.

16 Prosecution witness TANAKA, Ryukichi testi-
17 fied: "At dinner meeting, sponsored by SUZUKI,
18 Takashi at the "Akebono" restaurant one day in
19 September, 1934, I was told by the defendant
20 HASHIMOTO that he had something to do with the
21 Manchurian Incident." The fact, however, is that
22 no other meeting sponsored by SUZUKI, Takashi for
23 a farewell party in honor of Major General TOJO was
24 ever held at the "Akebono" restaurant. The affidavits
25 T. 28795.

of defendant HASHIMOTO^{c.} and witness SUZUKI, Takeshi,^{b.}
 1 clearly show that HASHIMOTO did not attend this party.
 2 It is quite impossible for those who have never met
 3 each other to have a talk with each other. These
 4 show that the testimony of witness TANAKA, Ryukichi,
 5 was entirely false.

In addition, the fact that TANAKA, Ryukichi,
 7 is a liar is clearly shown in the respective testi-
 8 monies of defendants MINAMI,^{c.} ITAGAKI,^{d.} and the
 9 affidavits of witnesses KOISO^{e.} and HUTO,^{f.} and also
 10 in the several affidavits of witnesses KAWABE, Koshiro,^{g.}
 11 MINOMIYA, Yoshiharu,^{h.} OTSUKI, Akira,^{i.} and HARA,
 12 Shiro.^{j.} So great is the number of other evidences
 13 that they could not be mentioned here.

It can hardly be imagined that the Court
 15 may be blinded by such false statements of TANAKA.

As to the fact that the defendant HASHIMOTO
 18 was decorated, it is out of the question. If the
 19 defendant HASHIMOTO had had anything to do with the
 20 Manchurian Incident or with the founding of Manchukuo,
 21 he must not have been awarded so low a decoration as
 22 the Fourth Order of Merit. As early as June 1929,
 23

24 a. T. 28795.

b. T. 28788, 28789.

25 c. T. 19877.

d. T. 30324.

e. T. 32232.

f. Ex. 3454.

g. T. 32879.

h. T. 34413.

i. T. 34464.

j. T. 34453.

1 the fourth class of the Order of the Sacred Treasure
2 was conferred on him. Five years after that -- namely,
3 in April, 1934, he was given the fourth class of the
4 Order of the Rising Sun. This shows that he was
5 decorated, not in consideration of his distinguished
6 service, but only in acknowledgment of his service
7 in serving at the remote part of Manchuria. With
8 regard to this respect HASHIMOTO himself gave a testi-
9 mony saying: "I received the medal because I went to
10 Manchuria as a member of the garrison there."^a It
11 has now clearly been shown by the foregoing evidences
12 that the defendant HASHIMOTO did not have any connec-
13 tion whatever with the Lukden Incident.

14 6. Foundation of Manchukuo and others.

15 No evidence has been given by the prosecu-
16 tion concerning the doings of the defendant HASHIMOTO
17 during the period between the outbreak of the Man-
18 churian Incident and that of the Marco Polo Bridge
19 Incident of 1937.

20 He had nothing to do with Manchukuo except
21 that he, as officer attached to the HIMEJI regiment
22 was sent to and stayed for a short period in the
23 remote parts of Manchukuo to garrison there.

24
25 ^a. T. 28845.

CHAPTER IICHINA1. The Marco Polo Bridge Incident.

The Marco-Polo Bridge Incident could have, by means of diplomacy, been solved easily on the spot. As it was, the Chinese Army made a fierce attack on Fengtai at the very moment when the solution would have otherwise been made most easily. Consequently, the incident spread to such an extent that its solution became impossible to be realized. This fact was frankly admitted by General Chin Te-chun of the Chinese Army when he was called as witness. So no additional explanation may be needed concerning this respect.

The defendant HASHIMOTO bears no relations with the said incident, for he was at that time living in Tokyo as a simple ordinary civilian out of active service. This is clearly discernible in his personal history^{b.} and his affidavit.^{c.}

a. T. 2459.
b. Ex. 105.
c. Ex. 3195, T. 28796.

1 In addition, General Chin Te-chun testified
2 that HASHIMOTO, Gun was the Chief of the Staff of
3 the Japanese Army at the time of the Marco Polo
4 Bridge Incident,^{a.} and that Consul HASHIMOTO was a
5 different man from the defendant HASHIMOTO.^{b.} This
6 testimony is supported by witness HASHIMOTO, Gun,
7 in his affidavit.^{c.}

8 As far as the Marco Polo Bridge Incident is
9 concerned, the defendant HASHIMOTO was really taken
10 for another person. This mistake has now been clar-
11 fied.

12 2. The "Ladybird" Incident.

13 The firing of the "Ladybird" was an acci-
14 dental case due to the dense fog. The Japanese
15 Government and the Japanese Commander made a due
16 apology and compensation, which were accepted by the
17 British Government and the British Commander. Then
18 it was settled completely. Investigation made by
19 the Japanese Government ascertained that the defendant
20 HASHIMOTO was not in the least responsible for the
21 incident.
22

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25 a. T. 2464.
b. T. 2464-5 and T. 2517.
c. T. 20611-36.

1 During the rebuttal stage the prosecution
2 produced an excerpt from the interrogation of accused
3 HASHIMOTO, which was marked as the exhibit 3846, to
4 show the shelling of the Ladybird was not the acci-
5 dent. However, the said exhibit reads, ". . . I
6 immediately started shelling them. . . The white
7 ship came towards our position and it turned out to
8 be the British gun boat 'Ladybird.'" In other words,
9 after the shelling HASHIMOTO found out for the first
10 time it was the British ship as it came near to him.
11 The said exhibit itself clearly shows that the
12 shelling of the "Ladybird" was the accident.

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A. Errors in Point of Fact.

1 As documental evidences for the defendant
2 HASHIMOTO's guilt concerning the "Ladybird" Incident,
3 the prosecution has given the note of the British
4 Ambassador,^{a.} the inquiry report of the U. S. Navy
5 Department,^{b.} the interrogatory of the defendant
6 HASHIMOTO,^{c.} and the fact that HASHIMOTO was deco-
7 rated.
8

9 And moreover, Prosecutor Carr, in reply
10 to our motion for dismissal, submitted prosecution
11 document No. 0001, in which it is stated that the
12 U. S. S. Panay was sunk by the Japanese Army on the
13 Yangtze River on 12 December, when she was engaged
14 in protecting nationals and maintaining communica-
15 tion between Nanking and Hankow. The document adds
16 that the Panay survivors were picked up by the
17 "Ladybird," which was afterwards fired on and sunk
18 by the artillery corps under HASHIMOTO's command.
19 For evidence the inquiry report of the U. S. Navy
20 Department is cited.^{d.}
21

22 The prosecution alleges that the artillery
23 corps under command of the defendant HASHIMOTO sank
24 the "Ladybird" which had saved the Panay survivors.
25 This allegation has two mistakes in it -- one is the

a. Ex. 954-C; b. Ex. 263; c. Ex. 258; d. Ex. 263.

1 "Ladybird" saving of the Panay survivors, and the
2 other the sinking of the Ladybird owing to the firing.

3 It is now necessary for us to look into the
4 inquiry report of the U. S. Navy Department, which
5 may be summed up as follows:

6 At about 1338, several bombs released by
7 Japanese planes struck the U. S. S. Panay. After
8 some fifty hours ashore, during which time the
9 entire party suffered much hardships and exposure,
10 somewhat mitigated by the kindly assistance of the
11 Chinese, they returned and boarded the U. S. S.
12 OAHU and H. M. S. Ladybird.

13 The time referred to leads to the supposi-
14 tion that the Panay crew members boarding of the
15 Ladybird took place after 1500 hours on 14 December.
16 However, the fact that the shelling of the Ladybird
17 took place early on the morning of 12 December is
18 clearly shown both in the note delivered by Foreign
19 Minister HIROTA to the British Ambassador^{a.} and the
20 British statement given to Foreign Minister HIROTA.^{b.}

21 It follows therefore that the Panay had not
22 been sunk at the time the HASHIMOTO corps fired upon
23 the Ladybird, by mistake, and that, consequently,
24

25 a. Ex. 2527.

b. Ex. 2546.

the Panay crew cannot have boarded the Ladybird.

1 As to the other mistake concerning the
2 sinking of the Ladybird, any description that "the
3 Ladybird was sunk" is nowhere to be found in the said
4 inquiry report.

5 Of the evidences submitted by prosecution
6 and defense, those concerning the Ladybird Incident,
7 all show that one shell or two struck the ship and
8 yet did very little damage, and that the ship was
9 not sunk by the firing.
10

11 Investigations made by the prosecution are
12 thoroughly careless. What is more, the prosecution
13 is so inadvertent that, by reversing the time, it
14 is trying to lay the guilt on the defendant, saying
15 as if the ship had been sunk.

16 In the British Ambassador's note ^{a.} submitted
17 by the prosecution in order to show the defendant's
18 guilt, it is stated that: Colonel HASHIMOTO, the
19 senior Japanese military officer then at WUKU, said
20 that firing on warships was due to a mistake. ^{b.}
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25 a. Ex. 954-C, T. 9451-5.
b. T. 9452.

1 "His Majesty's Government have now been
2 glad to receive your Excellency's note -- of the
3 Imperial Government for the attacks on His Majesty's
4 Ships, stating that measures were immediately taken
5 to prevent the recurrence of such incidents and
6 adding that they will deal suitably with those
7 responsible and pay the necessary compensation."^{a.}
8 This clarifies that firing was due to a mistake,
9 that the Japanese Government tendered an apology,
10 and that the British Government were satisfied
11 with the promises made by the Japanese Government
12 concerning the punishment of those responsible and
13 the payment of the compensation. It says nothing
14 in disfavor of the defendant HASHIMOTO.

15 In the interrogatory of the defendant
16 HASHIMOTO is stated, "This was orders from Lieutenant
17 General YANAGAWA,"^{b.} which shows that the firing
18 was made, not at the discretion of the defendant
19 HASHIMOTO himself but in accordance with orders
20 given him by his superior. Nor does this testify
21 anything in disfavor of the defendant HASHIMOTO
22 either.
23
24

25 a. T. 9453.
b. Ex. 258, T. 3466.

1 We shall next say something about the fact
2 that the defendant HASHIMOTO was decorated. It was
3 because HASHIMOTO distinguished himself very much
4 on the battlefields in Northern China and Central
5 China from August 1937 to April 1939 that he was
6 decorated with the fourth-class Order of the Golden
7 Kite. The Order of the Golden Kite was to be awarded
8 those who had won fame on the battlefield, not those
9 who had made any kind of mistake. His decoration,
10 therefore, has nothing to do with the firing of the
11 Ladybird.

12 It is fit that some more clarification
13 should be made concerning the Ladybird Incident.

14 It was Commander of the Army YANAGAWA,
15 Heisuke, that gave orders to fire upon ships carry-
16 ing remnants of the Chinese Army.^{a.} To the regret
17 of us, his death had made it impossible for us to
18 summon him as witness.^{b.}

19 Upon receiving orders to shell the retreating
20 ships, the HASHIMOTO corps, owing to the dense fog,
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25 a. Ex. 258, T. 3466.
b. T. 28798.

1 characteristic of the Yangtze River, could not dis-
2 tinguish the British gun boat from other Chinese
3 vessels carrying their retreating soldiers, and
4 because of this, made a mistake in firing upon it.

5 There are countless evidences to show what
6 the said orders were and how the firing was done by
7 mistake, some of which are the affidavit of witness
8 OBATA, Minoru,^{a.} the affidavit of witness NAKAYAMA,
9 Yasuhito,^{b.} the affidavit of defendant MATSUI,^{c.} the
10 affidavit of defendant HASHIMOTO,^{d.} the testimony
11 of defendant HASHIMOTO,^{e.} and an excerpt from the
12 book titled "The Inevitability of Renovation" written
13 by the defendant HASHIMOTO.^{f.}

14 B. Responsibility for the Shelling.

15 We now cite evidences, showing that the
16 defendant HASHIMOTO had no responsibility for the
17 shelling, on the following points, namely, both the
18 Japanese Government and the Commander-in-Chief of
19 the Japanese Army apologized to the British Government
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23 a. Ex. 3192.
24 b. Ex. 2577.
25 c. Ex. 3498.
d. Ex. 3195.
e. T. 28849.
f. Ex. 264, p. 3532.

1 as well as to the Commander-in-Chief of the British
2 Navy for the incident mentioned above, that the
3 Japanese Government compensated the British Govern-
4 ment for the loss from the incident^{a.} and the satis-
5 faction being expressed by the British Government, the
6 incident was brought to a complete settlement.

7 The witness NAKAYAMA, Yasuto, states in
8 his affidavit^{b.} as follows:

9 ". . . I reported the results of my inves-
10 tigation as above to General TSUKADA, the Chief of
11 the Staff, and then to General MATSUI. General
12 MATSUI ordered TSUKADA, the Chief of Staff, to trans-
13 mit his message to the Commander of the 10th Army
14 that apology should be immediately made to the Chief
15 of the British Navy, and I heard about this matter
16 beside him. Then I heard that General MATSUI, imme-
17 diately after returning to Shanghai from Nanking, met
18 Admiral Little of Britain, to whom he expressed
19 feelings of his great regret, and that the Admiral
20 came to understand this matter and promised him to
21 convey General MATSUI's apology to the British Govern-
22 ment."^{c.}

- 23
24 a. Ex. 264.
25 b. T. 21911.
c. T. 21911.

1 The defendant MATSUI states in his
2 a.
3 affidavit^{a.} as follows:

4 ". . . I received a report that some
5 artillery unit belonging to the 10th Army bombarded
6 a British gun boat in the neighborhood of Wuhu, I
7 ordered my Chief of Staff to investigate it immediately --

8 "I immediately ordered the Commander of the
9 10th Army to tender his apology accordingly to the
10 British Naval Commander-in-Chief there. I, myself,
11 returned to Shanghai from Nanking, called on Admiral
12 Little of the British Navy without delay and apologized
13 to him for the incident. He fully understood
14 my intention and promised me that he would transmit
15 my apology to his government. . ." ^{b.}

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25 a. Ex. 3498.
b. T. 33833-4.

1 The witness KAWABE, Torashiro, states in his
2 (a)
3 affidavit as follows:

4 "In cases where there were damages to the
5 third states, or the peoples of the third states, the
6 Central Supreme Command was ready to make fair inves-
7 tigation and to make necessary compensation for them.
8 From the above-mentioned standpoint the 2nd Division
9 in the Central Staff Office chiefly cooperated with
10 the War Ministry in investigating such matters. The
11 greatest of the incidents of such kind which took place
12 while I held my post as chief was the bombardment of
13 the Ladybird. According to my investigation at that
14 time, the ship was bombarded under the orders made by
15 Lt. General YANAGAWA, Army Commander, and Colonel HASHI-
16 MOTO, Kingoro, the intermediate commander, was not
17 responsible for the accident. Concerning the accident
18 itself, I remember, too, that we soon reached a settle-
19 ment with Britain. (b)

20 The defendant HASHIMOTO states in his affidavit (c)
21 as follows:

22 "While I was at the front, pursuant to the
23 order of the Commanding General of the Army, YANAGAWA,
24 at Wuhu I fired at ships fleeing from Nanking which

- 25 a. Ex. 2582.
b. Tr. 22,002-3.
c. Ex. 3195.

1 were carrying retreating Chinese soldiers. Unfortunately,
2 on that occasion the British Gunboat Ladybird which
3 was among the Chinese ships was struck and an incident
4 was created. But the fact that the shooting was by
5 mistake due to the dense fog which made me take it for
6 a Chinese ship was brought to light and I was set free
7 from any responsibility." (a)

8 The British note delivered by Sir Robert
9 Craigie to the Foreign Minister on the 31st of Decem-
10 ber, 1937, reads as follows: (b)

11 "Your Excellency, I have the honor on
12 instructions from His Majesty's Government in the United
13 Kingdom to inform Your Excellency that they have noted
14 with appreciation the assurances contained in Your
15 Excellency's note of December 28 in connection with the
16 attacks on British warships and merchant vessels on
17 December 12, and have learned with satisfaction that
18 the statements contained in your note of December 14
19 apply to merchant vessels concerned as well as to
20 warships.
21

22 "His Majesty's Government note however with
23 satisfaction that the Japanese Government have taken
24 or are prepared to take the necessary measures to deal

25 a. Tr. 28,796.
b. Ex. 2546.

1 suitably with the officers responsible for these inci-
2 dents and to prevent any repetition..."^(a)

3 The certified statement from the United Kingdom
4 Liaison Mission in Japan, British Embassy, Tokyo, reads
5 as follows:^(b)

6 "His Majesty's ship Ladybird was damaged by
7 Japanese artillery fire at Wuhu on December 12, 1937.
8 Damage was originally assessed at 3,830 pounds but
9 this was later reduced to 2,942 pounds. A claim for
10 2,942 pounds was presented to the Japanese Government
11 on August 18, 1938, and a cheque for this amount was
12 paid to His Majesty's Ambassador, Tokyo, on August 31,
13 1938..."^(c)

14 Through the above-mentioned facts it is clear
15 that the defendant HASHIMOTO had no responsibility for
16 the Ladybird Incident.

17 3. Atrocities in Nanking, Kwantung, Hankow,
18 etc.

19 The prosecution alleges that "the defendant
20 HASHIMOTO participated as one of the leaders, organizers,
21 instigators, or accomplices in the formation or execution
22 of a common plan or conspiracy as to murder and that
23 he, by unlawfully ordering, causing and permitting the
24 armed forces of Japan to attack the cities of Nanking,
25

a. Tr. 21,540-1.

c. Tr. 21,371.

b. Ex. 2528.

1 Kwantung and Hankow in breach of the articles of the
2 treaties with China and to slaughter the inhabitants
3 contrary to international law, unlawfully killed large
4 numbers of them." But no evidence relating to this
5 has so far been adduced by the prosecution.

6 As for this point, the defendant HASHIMOTO
7 states in his affidavit as follows: (a)

8 "Neither I nor the forces under my command
9 have ever been at Nanking, Hankow or Canton. I have
10 neither ill-treated POW's, nor committed inhuman acts
11 against any persons. Neither have I permitted others
12 under my authority to do such acts. I have never been
13 in a position wherein I could have performed such
14 acts." (b)

15 The witness OBATA, Minoru, states in his
16 affidavit as follows: (c)

17 "The HASHIMOTO Force was stopped at Wuhu, 14
18 or 15 ri (about 37 miles) from Nanking. Shortly after
19 the fall of Nanking this force was ordered to advance
20 to Hangchow and therefore never participated in the
21 attack on Nanking nor did it enter into the city or
22 its vicinity."

23 "The HASHIMOTO force did not attack Hankow
24

- 25 a. Ex. 3195.
b. Tr. 28,796-7.
c. Ex. 3192.

1 nor did it enter Hankow or its vicinity.

2 "The HASHIMOTO force did not attack Canton
3 (a)
4 nor did it enter Canton or its vicinity."

5 The defendant HASHIMOTO deeply regrets that
6 he was given such disgrace by the prosecution without
7 any evidence.

8 CHAPTER III. SOVIET UNION.

9 1. Caucasus Report.

10 Prosecutor Carr, presuming that the defendant
11 HASHIMOTO had an intention of aggression upon the
12 Soviet Union, states as follows:

13 "Exhibit 734-A shows clearly that HASHIMOTO
14 in 1929 was already advocating of performing obstructive
15 operations to the Soviet Union and occupying the
16 Caucasus by force."

17 But exhibit 734-A is an excerpt from a very
18 small part of exhibit 734, "HASHIMOTO's Report on the
19 Caucasus." The whole meaning cannot be expressed by
20 exhibit 734-A alone. In other words, it is impossible
21 to understand clearly the whole meaning without read-
22 ing the part following exhibit 734-A, that is, exhibit
23 3191, together, which was presented in the individual
24 case of defendant HASHIMOTO. Exhibit 3191 reads as
25 follows:

a. Tr. 28,772.

1 "Now in relation to how advantage can be
2 taken of these countries strategically, the following
3 points should be borne in mind subject to change, of
4 course, with the then existing world situation. We
5 must recognize that England after her expedition into
6 the Caucasus following the Russian revolution, is
7 greatly desirous of holding on to Baku's oil. And
8 it is necessary to take advantage of this fact. How-
9 ever, in the event of Russo-Japanese trouble she cannot
10 very well make any movement in the Caucasus against
11 Russia without sufficient reason. But it is possible
12 for England and Japan to jointly act and encourage
13 both Turkey and Persia's craving for territory in the
14 Caucasus and use these two countries as tools to work
15 upon the Musuliman state in the Caucasus.

16
17 In any event it is most essential to continue
18 to maintain good relations with England in case trouble
19 should arise between Russia and Japan."^(a)

20 About this matter, the defendant HASHIMOTO
21 states in his affidavit as follows:^(b)

22 "In September 1927 I was appointed Military
23 Attache to the Japanese Embassy in Turkey and served
24 there till January 1930. During the period -- on

25 a. Tr. 28,765-6.
b. Ex. 3194.

1 15 November 1929 -- I sent to Deputy Chief of Staff
2 OKAMOTO, Renichiro, a report bearing the title of
3 'Situation in the Caucasus and Its Strategic Utiliza-
4 tion.' This report was made in the course of the per-
5 formance of a military attache's routine duty. In
6 this report the phrases subject to change, of course,
7 with the then existing world situation and in case
8 trouble should arise between Russia and Japan appear.
9 These phrases should be interpreted to mean that our
10 attitude has to be altered in accordance with changes
11 in international relations and if, unfortunately, a
12 war should break out between Japan and Russia.

13 "It is obvious not only from this report, but
14 also from an examination of any and all other evidence
15 that I had never plotted, prepared or conspired with
16 others to wage an aggressive war against Russia."^(a)
17

18 It is too strained an interpretation that the
19 prosecution regards this report as being a plan of
20 aggression. There is no probative value in it.

21 2. Berlin Talk.

22 The prosecution are under the misunderstanding
23 that defendant MATSUI called resident military attaches
24 to Berlin and made previous arrangements together with
25 them as to aggression against the Soviet Union.

a. Tr. 28,792-3.

1 Defendant HASHIMOTO is also observed to have partici-
2 pated in the meeting as above. No evidence in con-
3 nection with this, however, has been adduced yet by
4 the prosecution.

5 Defendant MATSUI states in his affidavit (a) as
6 follows:

7 "Just when I was passing Berlin in April
8 1929, military attaches stationed in various states
9 in Europe, taking the opportunity of my arrival there,
10 got together with the object of renewing friendship.

11 "It was not an official conference and there
12 was no particular purpose. It was presided over by
13 Major General OMURA, Yurin, attache in Berlin, and the
14 meeting was of social nature. It was not a conference
15 called and sponsored by me. Moreover, as I mentioned
16 above, I at that time had already been dismissed from
17 the post of Chief of the 2nd Section, General Staff
18 Headquarters, and, as a mere lieutenant general, I
19 had no official power to sponsor a conference among the
20 attaches of various embassies. In short, it was only
21 a social meeting and nothing was decided upon with
22 regard to the problems of the time, and no particular
23 items were on the agenda. It was merely an informal
24 round-table discussion at which the attaches expressed
25 a. Ex. 3498.

1 their opinions on the situations in Europe. Accordingly,
2 no minutes were taken and I had made no report thereof
3 to my superior after my return to Japan. At the meeting
4 I was seated in the seat of honor only as a visitor
5 who came to that part of the world from afar. On this
6 point, the contents of the prosecution evidence,
7 exhibit No. 733, is contradictory to the statement I
8 made to the prosecution..."^(a)

9 When the defendant MATSUI was asked by the
10 prosecutor, Nolan, "...At this meeting such matters
11 as sabotage and espionage against Russia were discussed,
12 were they not?" to this, MATSUI said, "No, no such
13 things were discussed. Each representative told of
14 the situation in the country in which he was stationed."^(b)

15 The defendant HASHIMOTO states as witness as
16 follows:

17 "...The Military Attache to the Embassy in
18 Berlin sent an invitation to the Military Attaches in
19 Europe saying that since Lt. General MATSUI, the former
20 head of the Second Department of the General Staff
21 Department, was coming to Europe, it would be a good
22 idea to have a discussion meeting at Berlin. I went
23 to Berlin on that invitation. On the morning of the
24

25 a. Tr. 33,827-8.
b. Tr. 33,887.

1 following day the discussion meeting was held. Lt.
2 General MATSUI talked to us on the situation in the
3 home island, while we talked to him about the situation
4 in the countries in which we were stationed. That is
5 all that transpired." (a) In answer to the prosecution
6 questions, he further stated in effect that nothing
7 particular took place at that meeting with regard to
8 any war plans or any conspiracy against the Soviet
9 Union. No records or papers or decisions were made
10 at that meeting against the Soviet Union. (b)

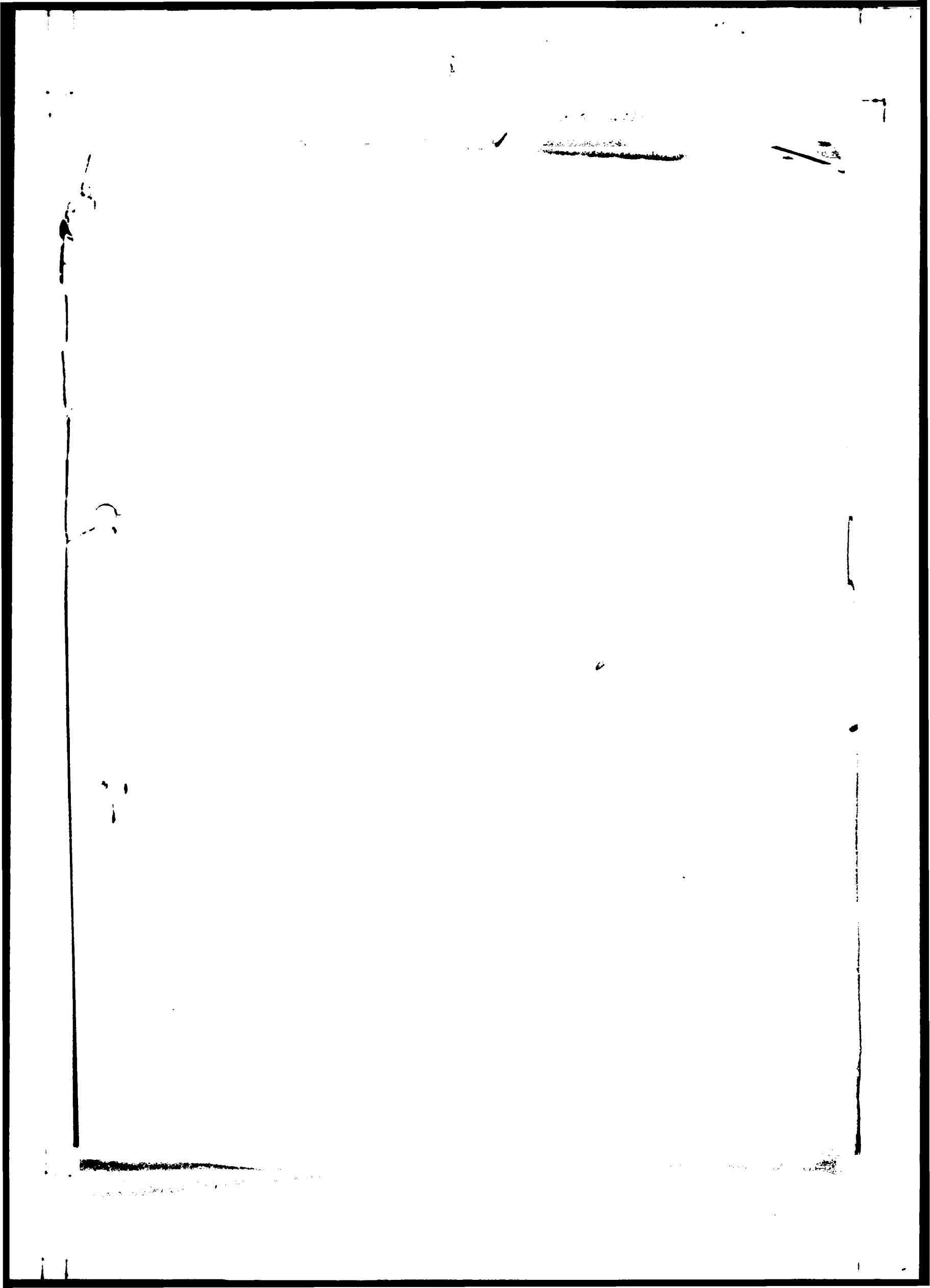
11 The above-mentioned matter is beyond controversy.

12 THE PRESIDENT: We will adjourn until half-
13 past nine tomorrow morning.

14 (Whereupon, at 1600, an adjournment
15 was taken until Friday, 19 March 1948, at 0930.)
16

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25 a. Tr. 28,799, 28,800.
b. Tr. 28,800.



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Summ
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19 MARCH 1948

I N D E X

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1 Friday, 19 March 1948

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE R. B. PAL,
14 Member from India, not sitting from 0930 to 1600;
15 HONORABLE JUSTICE E. STUART McDOUGALL, Member from
16 the Dominion of Canada and HONORABLE JUSTICE B. V. A.
17 ROLING, Member from the Kingdom of the Netherlands,
18 not sitting from 1330 to 1600.

19 For the Prosecution Section, same as before.

20 For the Defense Section, same as before.

21 - - -

22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
25

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MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present except SHIRATORI and UMEZU, who are represented by counsel. The Sugamo Prison surgeon certifies that they are ill and are unable to attend. The certificates will be recorded and filed.

With the Tribunal's permission KIMURA will be absent from the court room for the first period of the morning session, conferring with his counsel.

Mr. HAYASHI.

MR. HAYASHI: I continue the reading of my statement on page 52, Chapter IV, as to Associations.

1. The Imperial Rule Assistance Association.

It has been stated in the General Argument Part, that defendant HASHIMOTO was not "one of the founders of the Imperial Rule Assistance Association", as observed by the prosecution. Owing to his having much experience in national movements, the defendant HASHIMOTO was appointed one of many directors (sohmu) of the Imperial Rule Assistance Association (IRAA) by Mr. KONOYE, Fumimaro. However, after about five months, and while the second KONOYE Cabinet was in power, he resigned the post and seceded from the Association because of its reorganization .

1 Then, the said association's objective must
2 be proved. Mr. GOTO, Fumio, a witness who was called
3 to the Court by the prosecution, testified during his
4 cross examination as follows:

5 "Q In the platform of the Imperial Rule Assistance
6 Association it is stated that, 'Thus, we shall become
7 the glorious moral leaders of the world.' What did
8 this mean?

9 "A The Imperial Rule Assistance organization
10 endeavored to raise the moral standard of the nation,
11 and to gain respect from various nations and countries.

12 "Q Also, in the second article of the platform
13 of the Imperial Rule Assistance Association it is
14 stated, 'This society shall strive for the establish-
15 ment of a world new order.' Is it true that this
16 society has ever striven for a world new order?

17 "A The association has never endeavored to attain
18 such a goal. They had no time, and besides that,
19 fortunately, they never gained enough power to do that. a
20

21 "Q In the second article of the regulations for
22 the Imperial Rule Assistance movement it is stated:
23 'That the entire nation shall be as one and shall
24 fulfill their duties each in his own sphere, and
25 establishing such an organization, shall work in order

1 that this organization shall function smoothly and in
2 this way shall strive to fulfill their duties as
3 subjects.' Was there any other object besides the
4 purpose that I have just quoted in this movement?

5 "A It has no other object than that.^a

6 "Q ...To be the moral leader of the world and
7 to work for the establishment of a new world order,
8 these are not included in the purpose of the Imperial
9 Rule Assistance Association?

10 "A They are not included in the purpose.^b

11 "Q Then, was the purpose of the Imperial Rule
12 Assistance Association to prepare the people for an
13 inhumane and illegal war against Great Britain and
14 America, a war which should not have been begun and a
15 war which cannot be defended? Was the purpose of the
16 Imperial Rule Assistance Association to prepare public
17 opinion for such a war, or was it not?

18 "A According to my understanding, the Imperial
19 Rule Assistance Association was not formed with such
20 an object in view."^c

21
22 That the Imperial Rule Assistance Association
23 had nothing to do with the Pacific War is testified by

24 a. Tr. 1643 - 6

25 b. Tr. 1646

c. Tr. 1648 - a

witness ANDO, Kisaburo in his affidavit^a to-wit:

1 "Regarding the Greater East Asia War, we never heard
2 anything that would lead our association to believe
3 such a war imminent, either at the time of my assump-
4 tion of office, or after my assumption, in any guidance
5 received from any ministry, in any instructions or
6 demands from them, either outwardly or confidentially,
7 until the issuance of the Imperial Rescript declaring
8 war."^b
9

10 Further, concerning the said association, the
11 defendant HASHIMOTO testifies in his affidavit (Ex. 3195,
12 par. 22):^c "In the fall of 1940 I was appointed a
13 director of the IRAA, formed by Prince KONOYE, Fumimaro,
14 from which I resigned in February 1941. The said asso-
15 ciation's object was the practice of the 'Way of the
16 Subject'. It was not a body which was formed with
17 aggressive war as its aim nor did it work toward such
18 an end." In appendix E of the Indictment it is stated:
19 "The defendant HASHIMOTO was a member of a number of
20 societies for the instigation of army control over
21 politics and furtherance of aggressive warfare." However,
22 it is fully evident from the proofs mentioned above that
23 the Imperial Rule Assistance Association was not such an
24

- 25
- a. Ex. 2363
 - b. Tr. 18,148-9
 - c. Tr. 28,708

organization as alleged by the prosecution.

1 2. The Imperial Rule Assistance Men's Corps
2 (IRAMC) ("Yokusan-Sonon-Dan").
3

4 The defendant HASHIMOTO was connected for a
5 short time with the Imperial Rule Assistance Men's Corps,
6 which was a subsidiary of the Imperial Rule Assistance
7 Association. The prosecution has not adduced evidence
8 regarding this body. However, with regard to its object
9 and the like, the defense must cite evidence to the Court.

10 The witness OGAWA, Kiichi testifies in his
11 affidavit (Ex. 3193, par. 13 and 14)^a: "In September 1944
12 at the time of the dissolution of the Dainihon Seiseikai
13 I joined the Imperial Rule Youth Association. Its
14 membership never included a single military man on the
15 active list nor a single influential government official.
16 I was at the time of my joining the association one of
17 the General Affairs committee, and in November 1944
18 I became Chief of the Guidance branch." The activity
19 of the IRYA was principally the encouragement of an
20 increase in wheat production. The activity of the IRYA
21 was absolutely not directed toward aggressive war."^b
22

23 The defendant HASHIMOTO, too, testifies in
24 his affidavit (Ex. 3195, par. 23)^c: "In September 1944

- 25 a. Ex. 3193
 b. Tr. 28,785-6
 c. Ex. 3195

1 I was appointed Headquarters Director of the Imperial
2 Rule Assistance Adult Association which was a part of
3 the IRAA, but I resigned in February 1945. After
4 joining this association my only work was the barley
5 crop increase campaign. The association was not a
6 body which was formed with aggressive war as its aim
7 nor did it work toward such an end." ^a

8 It can be proved by the evidence mentioned
9 above that this organization, too, was not for the
10 instigation of army control over politics and further-
11 ance of aggressive warfare.

12 3. The Imperial Rule Assistance Association.

13 With reference to this organization, the prose-
14 cution has produced no evidence. Therefore, it is not
15 necessary to make any argument at this time.

16 4. Japan Youth's Party.

17 The Japan Youth Party was not a body for the
18 instigation of army control over politics and further-
19 ance of aggressive warfare. The prosecution has proved
20 nothing concerning this party. No proof will be given
21 briefly.

22 The defendant HASHIMOTO testifies in his
23 affidavit (Ex. 3195, par. 19, as follows: ^b

- 24 a. Tr. 28,798
25 b. Ex. 3195

1 "After I left active service I founded, in
2 October 1936, with a view to national reform, the Great
3 Japan Youth Party, of which no soldier on active duty
4 nor any distinguished personages were members.

5 "The party was supported by 1 Yen per capita
6 entrance fee and 1 Yen per capita annual membership fee
7 paid in by a little less than 20,000 members. It was
8 never subsidized by the army or from any other quarter.
9 It did not aim at aggressive war."^a

10 The witness OGAWA, Kiichi testifies in his
11 affidavit (Ex. 3193, par. 3-5)^b as follows:

12 "3. The purposes of the Dainihon Seinento
13 were to abolish the established parties and to accomplish
14 domestic reform since the general public feeling at that
15 time was that these parties and the Zaibatsu, in collus-
16 ion, had selfishly appropriated to themselves the
17 government to such extent that extreme corruption was
18 rampant everywhere and the only ones whom the public
19 could trust were the military and the judiciary. The
20 Dainihon Seinento absolutely did not have aggressive war
21 as its objective.

22 "4. ...It never included a single military
23 man on the active list, nor a single influential
24

25 a. Tr. 28,797

b. Ex. 3193

1 government official.

2 "5. ... The society never received any
3 financial aid from the military or from any other
4 source."^a

5 5. The Dainihon Sekisei-Kai.

6 With reference to the Dai Nihon Sekisei-Kai
7 the prosecution has proved nothing. Therefore, there
8 is no need to state much concerning this society. How-
9 ever, I will state that the said society was not a body
10 for the instigation of army control over politics and
11 furtherance of aggressive warfare.

12 The defendant HASHIMOTO testifies in his
13 affidavit as follows:^b

14 "After the dissolution of the said party (Great
15 Japan Youth Party) in October 1940. I established the
16 Great Japan Loyalty Society (Dai-Nihon Sekisei-Kai),
17 consisting of some of the members of the former. No
18 soldiers on active duty nor any distinguished personages
19 were among its members. This society was maintained
20 by about 5,000 members' entrance fees at 2 Yen per
21 capita and an annual membership fee of 1 Yen per capita
22 and was not subsidized by the army or from any other
23 quarter. This society did not aim at aggressive war.
24 It was dissolved in September 1944."^c

25 a. T.28,783-4. b. Ex. 3195, par.20. c. T.28,797-8.

The witness OGAWA, Kiichi testifies in his
1 affidavit as follows:^a "The Dai Nihon Sekisei-Kai,
2 a thought organization, was formed upon the dissolution
3 of the Dai Nihon Seinen-to out of a portion of the
4 latter's membership.

5 "8 The Dai Nihon Sekiseikai had as its object-
6 ives the guidance of the thought of Japanese youth and
7 the encouragement of increasing the rice production.
8 This increase was to be based on the Oninoue system.
9 Aggressive war was absolutely no part of the society's
10 objectives.

11 "9. The membership of the Dai Nihon Sekiseikai
12 never . . . included a single military man on the active
13 list or a single influential government official."

14 "10. The society never received any financial
15 aid from the military or from any other source."^b

16 6. The Sakura-Kai (The Cherry Blossom Society).

17 It has been proved in the part of Details,
18 Chapter I, Sec. 1, that the Sakura-Kai was not an
19 organization "for the instigation of army control over
20 politics and furtherance of aggressive warfare."
21

22 On the grounds as proved above, it has become
23 completely evident that there is no evidence whatsoever
24 given by the prosecution with regard to the allegation
25

a. Ex. 3193, par. 7-10

b. T. 28, 284-5

1 in Appendix E of the Indictment, that is, "The defend-
2 ant HASHIMOTO was a member of a number of societies for
3 the instigation of army control over politics and fur-
4 therance of aggressive warfare." Defendant HASHIMOTO
5 was not a member of such societies.

6 CHAPTER V.

7 BOOKS, ESSAYS AND SPEECHES

8 1. HASHIMOTO's Books.

9 Appendix E of the Indictment indicates the
10 defendant HASHIMOTO as the "author of a large number
11 of books, articles in the magazine 'Taivo Dai-Nippon',
12 and other publications and public speeches, all advocat-
13 ing aggressive warfare."

14 As such books, the prosecution cites, namely,
15 "Messages to Young Men",^a "The Inevitability of
16 Renovation",^b "The Road to the Reconstruction of the
17 World",^c and "The Second Creation".^d
18
19
20
21
22

- 23 a. Ex. 2190-A
24 b. Ex. 264, 866
25 c. Ex. 177
d. Ex. 2187-A

1 According to the List of HASHIMOTO, Kingoro's
2 Books,^a the date of writing "Messages to Young Man"
3 is June 1937 and that of its publication is 5 July
4 1937. "The Inevitability of Renovation" was written
5 on 25 December 1940 and published on 31 December 1940.
6 The excerpts from "The Road to the Reconstruction of
7 the World" was written on 17 December 1936 and pub-
8 lished on 30 January 1941. "The Second Creation"
9 was written on 19 November 1939 and published on 30
10 January 1941.

11 When referred to the defendant HASHIMOTO's
12 personal history,^b it is evident that these above
13 mentioned books were all written and published by him
14 as an ordinary civilian.

15 In this regard, the defendant HASHIMOTO
16 testifies in his affidavit,^c "My publications
17 'Messages to Young Men,' 'The Inevitability of
18 Renovation,' 'The Road to the Reconstruction
19 of the World' and 'The Second Creation,' ----
20 were all written and published when I was an
21

22
23 a. Tr. 28,764, Ex. 3190.

24 b. Ex. 105

25 c. Tr. 28,791-2, Ex. 3195, Par. 6.

1 ordinary civilian. In these publications
2 were described only my personal opinions as an ordin-
3 ary civilian, and they did not represent any plan or
4 conspiracy worked out in cooperation with any other
5 party.*

6 The witness OGAWA, Kiichi testifies in his
7 affidavit,^a "The books of HASHIMOTO, Kingoro --
8 'Advice to Youth,' 'The Second Creation,' 'The
9 Inevitable Renovation,' 'How to Rebuild World,' and
10 'The Declaration of HASHIMOTO, Kingoro,' were
11 all written after he gave up his military career
12 and had become an ordinary civilian"

13 Of these books mentioned above, "The
14 Inevitability of Renovation" was published when the
15 defendant HASHIMOTO was a director (Sohnu) of the
16 IRAA. However, it was not written in the capacity
17 of the director of the IRAA. To the question by
18 prosecutor Tavenner, the defendant HASHIMOTO clearly
19 answered to this effect.^b The defendant HASHIMOTO
20 also testified clearly that this book is reproductions
21 of the articles appearing in the "Taiyo Dai-Nippon."^c
22 By the way, the Director of the IRAA is only an
23 ordinary civilian.
24

25 a. Tr. 28,786, Ex. 3193, Par. 15.

b. Tr. 28,851.

c. Tr. 28,838.

1 Upon examination of these four books of his,
2 it is found that although some of them "describe the
3 necessity of war," none of them is to be regarded
4 as "advocating aggressive warfare." Therefore, the
5 prosecution's allegation that the defendant HASHIMOTO
6 is an author of a large number of books advocating
7 aggressive warfare is not based on evidence.

8 2. Articles.

9 The prosecution indicates the defendant
10 HASHIMOTO as advocating aggressive warfare as an
11 author of a large number of articles appearing in
12 the magazine "Taiyo Dai-Nippon" and in evidence pro-
13 duced a bundle of copies of the magazine "Taiyo
14 Dai-Nippon" in which his essays concerning the
15 Greater East Asiatic Co-prosperity Sphere appear.^a
16 And, these essays are all cited in the List of
17 HASHIMOTO, Kingoro's Essays.^b Your attention will first
18 of all be called~~ed~~ to the fact that publication
19 dates of these essays are all when he was an
20 ordinary civilian. In this regard, the defendant
21 HASHIMOTO testifies in his affidavit as follows:^c
22

- 23
24 a. Ex. 675-A
25 b. Ex. 3190-A
c. Ex. 3195, Par. 6, Tr. 28,792.

1 "..... essays which appeared in the maga-
2 zine 'Taiyo Dai-Nippon' were all written and pub-
3 lished when I was an ordinary civilian. In these
4 essays were described only my personal
5 opinions as an ordinary civilian and they did not
6 represent any plan or conspiracy worked out in
7 cooperation with any other party."
8

9 Further, the witness OGAWA, Kiichi, too,
10 testifies in his affidavit,^a ". . . his essays '
11 in the 'Taiyo Dai-Nippon' were all written after
12 he had given up his military career and had become
13 an ordinary civilian..."

14 Next, with reference to what the "Taiyo
15 Dai-Nippon" was, the defendant HASHIMOTO deposes in
16 his affidavit^b as follows:

17 "21. 'Taiyo Dai-Nippon' was the official
18 publication of the Great Japan Youth Party and then
19 of the Great Japan Loyalty Society after the former's
20 dissolution. Its circulation was limited to its
21 members."

22 The witness OGAWA, Kiichi testifies in his
23 affidavit:^c
24

- 25 a. Tr. 28,786, Ex. 3193, Par. 15.
b. Tr. 28,798, Ex. 3195, Par. 21.
c. Tr. 28,785, Ex. 3193, Par. 11

1 "The Dai Nihon Sekiseikai took over the
2 management of the official news organ of the
3 Dai Nihon Seinento -- the 'Taiyo Dai Nihon.' After
4 the transfer of management of the Sekiseikai every
5 effort was made to publish articles concerning
6 increasing rice production. This also was not cir-
7 culated outside the membership."

8 When these essays are scrutinized word by
9 word, there is nothing to be regarded as advocating
10 aggressive warfare, although some of them describe
11 the necessity of war. Therefore, the prosecution's
12 allegation that the defendant HASHIMOTO is the
13 author of a large number of essays, all advocating
14 aggressive warfare, is not based upon evidence.

15 3. Speeches.

16 The prosecution charges the defendant
17 HASHIMOTO for being one who made a large number of
18 public speeches advocating aggressive warfare, and
19 produced in evidence the "JUMPO" (or "Every-Ten-
20 Days Report") published by the Japanese Home Ministry.

21 According to that evidence, the date when
22 the defendant HASHIMOTO made speeches is November
23 1941. It is evidence from his personal history^a
24 that at that time he was an ordinary civilian.
25

1 Even if we minutely examine the contents of
2 the said evidence, we cannot find any parts to
3 be regarded as advocating aggressive warfare.
4 The defendant HASHIMOTO states in his affidavit ^b
5 "While a civilian I made some public speeches, but
6 these conveyed only my personal convictions arrived
7 at independently and not through any plan or con-
8 spiracy with any other persons."

9 On these grounds, I cannot but say that it
10 is too unjustifiable for the prosecution, basing
11 on the defendant HASHIMOTO's speeches, to indict
12 the defendant HASHIMOTO on the charges of advocat-
13 ing aggressive warfare.

14 CONCLUSION

15 The accused HASHIMOTO, Kingoro is a true
16 type of traditional Japanese in whom the spirit of
17 "bushido" is exquisitely embodied. He does not
18 like to conceal what he did or to simulate what he
19 did not do. In reply to the charges of the
20 Indictment he has offered evidence in a candid and
21 upright manner withholding nothing and adding nothing
22 to the truth. In case any of his acts in the past be
23 held criminal, he will be ready to receive the penalty
24 prescribed therefore.
25

b. Ex. 3195, Par. 7, Tr. 28,792.

1 Nonetheless, his firm conviction that his
2 whole conduct in the past should in no sense be held
3 criminal will not in the least be affected thereby.
4 Therefore, we contend that he is free from any of
5 the charges set out in those counts in which he is
6 indicted.

7 This concludes the summation.

8 THE PRESIDENT: Dr. UZAWA.

9 DR. UZAWA: Mr. Roberts will present the
10 summation in the individual case of the defendant
11 OKA.

12 THE PRESIDENT: Mr. Roberts.

13 MR. ROBERTS: May it please the Tribunal,
14 I will now present the summation on behalf of the
15 defendant Takazumi OKA.

16 1.

17 HIS CAREER

18 1. It is agreed between the prosecution
19 and the defense that the defendant OKA was a career
20 naval officer, who arose from the ranks after thirty-
21 four years of service to become a vice-admiral in 1942.

22 2. The ordinary presumption that a man is
23 presumed innocent until proven guilty would lead us
24 to believe that his many years of service were
25 responsible for his advancement, but the prosecution

1 would like this Tribunal to draw the conclusion that
2 his promotions were proof of his share in the con-
3 spiracy.¹

4 3. This is an indication of the paucity of
5 competent evidence to prove this defendant guilty
6 of any of the crimes charged against him. The
7 prosecution's case is built entirely upon inferences
8 and assumptions based only upon positions held by
9 the defendant, and not upon any specific acts which
10 he performed, nor any decisions which he made, nor
11 any orders which he formulated, or initiated, nor
12 anything which he said, which might tend to prove his
13 part in the alleged conspiracy to wage aggressive war,
14 or to commit any other crime. Many such inferences
15 are raised now for the first time only by citing some
16 appointments listed in his personnel record.² We
17 contend that his positions prove nothing. He must be
18 judged by his acts alone.
19

20 4. From the time of his graduation from the
21 Naval Academy in 1911, OKA spent most of his time,
22 until 1923, studying as a student in various naval
23 schools such as the Naval Torpedo School, (junior
24 course); Naval Gunnery School, (junior course);
25

1. PP-4.

2. Ex. 120, T. 751-61

1 Naval College, (class B student); Naval Torpedo
2 School, (advance course); Naval College (Class A
3 student), in addition to acting as a member stationed
4 in France for the research of military affairs, and
5 an instructor in the Naval Submarine School, the
6 Naval Torpedo School and the Naval College.³ Thus
7 his training amply fitted him for his career as a
8 naval officer, eliminating the necessity of conjuring
9 up any unfounded inferences to explain the reasons
10 for his advancement.

11 5. All of the positions occupied by OKA
12 from October, 1931 to October, 1940 were non-opera-
13 tional functions with the exception of one year, from
14 December 1936 to December, 1937, when he was appointed
15 captain of the warship "JINGEI" and served on coastal
16 patrol duty in Japan. Therefore, his work gave him
17 no opportunity to participate in the Manchurian
18 Incident, the Anti-Comintern Pact, and the China
19 Incident.⁴ Nor did his work give him any opportunity
20 to participate in the Japanese-Netherlands East
21 Indies negotiations, the Japan-French Indo-China
22 Protocol, and the advance of Japanese troops into
23 North French-Indo China, or the Tripartite Pact.⁵

24
25 3. T. 33,380
4. T. 33,382
5. T. 33,384

1 6. After becoming Director of the Naval
2 Affairs Bureau in October, 1940, OKA performed the
3 routine administrative duties connected with this
4 department under the supervision and direction of
5 the vice-minister, pursuant to orders of the Navy
6 Minister.⁶ There has not been one iota of evidence
7 which has shown that OKA conspired or attempted to
8 conspire with anyone, or that he committed any act
9 or acts outside of his regular routine duties as
10 outlined in the regulations.⁷

11 7. The assertion that OKA had great power
12 because he had control over the Navy budget is prepos-
13 terous. There is not a scintilla of evidence to show
14 his remotest connection with the budget at any time,
15 and it is a glaring example of a false inference with-
16 out any basis in fact. The exhibits referred to by
17 the prosecution do not support such an inference.^{7a}
18 The regulations provide that budgetary matters are
19 within the province of the Accounting Bureau.⁸
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25 6. T. 33,385

7. Ex. 75, T. 684

7a. PP-6

8. Ex. 75, Art. 22-24 (4), T. 684.

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25II. THE MANCHURIAN INCIDENT.

8. In September, 1931, OKA was a commander and a member of Section Two, Division one of the Naval General Staff. This section was concerned only with the study of armaments and had no operational functions. In October he was assigned for duty in the Naval General Staff and concurrently in the Navy Ministry, and was transferred to the Investigation or Research Section of the Navy Ministry, where he conducted studies on armaments, so that his assignment on the Naval General Staff was only nominal.⁹ He was not engaged in the Manchurian operations at any time and there is no basis for the inference that he took part in the decision to send reinforcements to Shanghai in January, 1932. The exhibit referred to shows this to be another conjecture without basis in fact. It is the League Report which refers only to the Imperial¹⁰ Navy.

9. The fact that OKA was decorated on April 29, 1934 for meritorious service in the Manchurian Incident from 1931 to 1934 is relied upon heavily by the prosecution as conclusive proof of his participation

(9. T. 33, 381
10. P. 8, Ex. 59, T. 3289)

1 therein. At best such an assumption is no conclusive
2 evidence of actual participation in aggressive war,
3 especially when we note that from October 1932 to
4 April 1934 he was working in Paris and Geneva.¹¹
5 This weak unsupported assumption and several addition-
6 al weaker statements form the basis for the assertion
7 that OKA is chargeable with participation in the
8 Manchurian Incident. It has been shown that many
9 thousands of naval men were similarly decorated with
10 this award which was below that made to the most
11 meritorious.¹² His knowledge about the naval mission
12 and oil from Fusan was shown to be hearsay and not
13 as a result of his participation.¹³ Consequently, there
14 is absolutely no evidence showing that this defendant
15 committed any acts, signed any orders, or participated
16 in any operations or decisions in furtherance of the
17 Manchurian Incident, which would even lend a shadow
18 of support to the foregoing conclusion.
19

20 III. ABROGATION OF THE WASHINGTON NAVAL
21 TREATY

22 10. The defendant OKA has been mentioned by
23 the prosecution as one of the few naval experts in the

24 (11. T. 33,381
25 12. T. 33,380
13. T. 33,427)

1 Japanese Navy in 1934, but it is significant to note
2 that throughout the testimony of Admiral Richardson
3 concerning the disarmament conference the name of
4 OKA is very conspicuous by its absence. The prominent
5 leaders of the discussions were mentioned as NAGANO
6 and YAMAMOTO.¹⁴ Even the prosecution has a difficult
7 task in trying to describe OKA's status at the con-
8 ference, because after the initial description, he
9 is subsequently referred to as the Navy's leading
10 expert¹⁵ and later he is merely included as an es-
11 sential member of the Navy group.¹⁶ It appears that
12 OKA was stationed in Paris and Geneva from October,
13 1932 to April, 1934, as a research member of the
14 Japanese Naval Delegation on the League of Nations
15 Permanent Military Commission and as a member of the
16 General Disarmament Commission of the Japanese Dele-
17 gation.¹⁷ Consequently, OKA was not present at the
18 conference in June and October 1934, and was not
19 present when Admiral NAGANO led the delegation from
20 the London Naval Conference on January 15, 1936.

21
22 11. A number of inferences are laboriously
23 drawn from thin air in the discussion of the disarmament

24 (14. T. 11,181-8; 11,248

25 15. PP-12

16. PP-13

17. T. 33,381)

1 conferences, without a suggestion of concrete evidence
2 to support them. It is inferred that a pamphlet
3 written in October, 1934, concerning the 1935 Naval
4 Limitations Conference was prepared with OKA's
5 assistance.¹⁸ This inference is drawn because of his
6 position as Chief of the Disarmament Section of the
7 Navy Ministry, whereas he was only actually a member
8 of the Investigation or Research Section of the
9 Navy Ministry. No other proof supports this assump-
10 tion. It is again assumed that because of his position
11 OKA was a member of the Navy Group that overrode
12 the protests of the Foreign Office, and here also
13 there is no evidence to show any possible basis in fact
14 for this assumption.¹⁹ It is incredible how such
15 attempted inferences can be drawn in view of the
16 fact that the prosecution shows that the instructions
17 for a common upper limit were given jointly by the
18 Navy Minister²⁰ and that Admiral NAGANO led the
19 delegation from the conference.²¹ Finally the pros-
20 ecution assumes that because OKA was attached to the
21 Navy Ministry he was one of the group that insisted
22 upon expansion of naval armaments,²² and reaches the

- 23 (18. PP-12
24 19. PP-13
25 20. PP-12
21. PP-13
22. PP-17)

1 grand climax of inferences in that, "by virtue of his
2 official position OKA played an important part in the
3 armament of Japan." Of course, there is not a shred
4 of evidence to support such inferences. It is only
5 the defendant's subordinate position which is relied
6 upon, contrary to the prosecution's statement that
7 no man has been charged with any crime unless he is
8 in some way responsible for the aggressive policy
9 of Japan.²³ It is clearly shown that his position
10 was never important enough' to permit him to formu-
11 late policies or participate in important decisions
12 which were in the hands of the Navy Minister and the
13 Naval General Staff.²⁴ From April, 1934 to December,
14 1936 OKA was employed in the Temporary Investigation
15 or Research Section of the Navy Ministry, and in
16 December, 1936 began a year's service as Commander
17 of the warship "Jingei." From January, 1938 to October,
18 1939 he served as Chief of Section One, Naval Affairs
19 Bureau.²⁵ This attempt to overstress the importance
20 of the defendant who was admittedly doing research
21 statistical work in connection with the disarmament
22 conference is another indication of the desperation
23 of the prosecution and its willingness to punish a
24

25 (23. K-3
24. T. 33,405
25. T. 33,382)

1 men simply because he faithfully served in the naval
2 arm of the enemy services. This Tribunal can almost
3 take judicial notice of the fact that a subordinate
4 in a section of the Naval Ministry could not possibly
5 be responsible for the important policies formulated
6 during the Washington Conference. It is likewise
7 evident that the actual decision to construct battle-
8 ships and cruisers was not participated in by OKA,
9 and there is no proof of his suggested connection
10 therewith. It also appears that the attempt to assume
11 OKA's participation in the policy of refusing infor-
12 mation about naval construction in February, 1938
13 is wholly without foundation. His connection with
14 the Armament Section dates only from January 15, 1938
15 and then it was only in a subordinate capacity, so
16 that the prior existence of such a government policy
17 cannot be attached to him in any manner. ²⁶ We repeat,
18 his positions prove nothing!

19
20 IV. FORTIFICATION OF THE MANDATED ISLANDS.

21 12. Here again the prosecution relies upon
22 certain presumed positions occupied by the defendant
23 OKA as proof of the fact that he was responsible for
24 the fortification of the Mandated Islands. Not a
25 single specific act is set forth to substantiate
(26. T. 33,382)

1 this contention and the recital of all the positions
 2 occupied by OKA from January 1938 through October 1940
 3 fails to support any such contention. As a matter
 4 of fact, the evidence referred to by the prosecution
 5 as proof of the fact that OKA was personally respon-
 6 sible shows exactly the contrary to be true.²⁷ The
 7 witness YOSHIDA stated that his duties were concerned
 8 exclusively with matters relating to naval facilities
 9 and equipment including planes, ships and the defense
 10 installations on the Mandated Islands. He further
 11 stated that it was the opinion of the Naval Affairs
 12 Bureau that no fortifications could be built because
 13 of treaty restrictions and that no such action was
 14 taken.²⁸

15 13. Considerable testimony to the same
 16 effect was adduced through the witnesses: Venecker²⁹,
 17 SHIMADA³⁰, TAKEGAWA³¹, HAYASHI³², KONDO³³, OHARA³⁴,
 18 NISHIRO³⁵, GOTO³⁶, SUZUKI³⁷, IWASAKI³⁸, and WAKAMATSU³⁹.

19 14. It affirmatively appears from the
 20 prosecution summation itself that Section Two of the

- 21 (27. PF-19
 22 28. Ex. 2990, T. 26,468 (34. T. 26,499 et seq.
 23 29. T. 26,557 et seq. 35. T. 26,716 et seq.
 30. T. 34,667 36. T. 26,517
 24 31. T. 26,505 et seq. 37. T. 26,511
 32. T. 26,491 et seq. 38. T. 26,524
 25 33. T. 26,495 et seq. 39. T. 26,552 et seq.

1 Naval Affairs Bureau handled matters of national
2 defense and international conventions.⁴⁰ At no time
3 prior to October, 1940, did OKA had any connection
4 with this section and thereafter it was under a sub-
5 ordinate. Consequently, there is no evidence of
6 any action taken by him with respect to the Mandated
7 Islands.

8 15. It is also significant to note that in
9 the summary of evidence, referred to at the close of
10 the prosecution's case on January 16, 1947, no sug-
11 gestion was made that OKA was considered responsible
12 for the alleged fortification of the Mandated Islands.⁴¹
13 That charge is made for the first time in this sum-
14 mation. In addition thereto, it is obvious that
15 subordinates in a department of the Navy Ministry
16 or even heads of various departments cannot act
17 independently of the Navy Minister, and their per-
18 formance of routine procedure cannot be characterized
19 as acts of aggression,⁴² especially when all his
20 acts are subject to the approval of his superior.

21 16. It has not been shown that the defendant
22 OKA issued any orders or gave any directions for the
23 fortification of the Mandated Islands and he cannot
24

25 (40. PP-19, Ex. 75, T. 684
41. T. 16,968-78
42. T. 33,386)

be held responsible in the absence of proof to
1 that effect. It may also be noted that such matters
2 of construction may be properly within the province
3 of the Engineering Construction Office of the Navy,
4 according to the Naval Organization Chart.⁴³ This
5 chart also serves to graphically illustrate the vast
6 division of detailed responsibility and the minor
7 role assumed by one bureau in this vast naval setup.

8
9 V. GREATER EAST ASIA

10 17. The prosecution again cites the appoint-
11 ment of the defendant OKA to a number of committees
12 as proof of his participation in military aggression
13 in China and the South Seas. Again, we have no
14 specific acts of this defendant which might support
15 this assumption. It is supposedly proven by the
16 mere assertion that he occupied various subordinate
17 positions.⁴⁴

18 18. Great pains are taken to conclude that
19 certain committees and boards were created for the
20 economic exploitation of Greater East Asia, and
21 then the further conclusion is drawn that simply
22 because of appointment to these committees and boards
23 OKA must share the responsibility for such economic
24 exploitation. It is not alleged that economic
25

(43. Ex. 2981, T. 26,415
44. PP-28)

exploitation is, in itself, a crime. However, it

1 is erroneously inferred that his appointment to
2 these committees was illogically outside his regular
3 routine duties thus unjustly characterizing him as
4 a wholehearted supporter of military aggression.⁴⁵

5 19. The foregoing unsupported conclusions
6 will be answered briefly by referring to the evidence
7 which proves that the appointments referred to were
8 regular routine appointments which usually accompanied
9 the office rather than the individual. From the
10 time he served as Chief of Section One in January,
11 1938 until July, 1944, he was named as secretary of
12 a number of committees and boards for the purpose of
13 carrying on liaison work with other ministries. As
14 a practical matter, he did not and could not personal-
15 ly attend all the meetings of these committees and
16 it has been irrefutably shown that he seldom attended.⁴⁶

17 Many of the committee names show them to be liaison
18 committees.^{46a} The same situation prevailed with
19 regard to councils upon which he was appointed as a
20 member, and it has been shown that important matters
21 pertaining to state policy were never deliberated at
22 these meetings.⁴⁷ The mere routine appointment to a

23
24
25 (45. PP-28
46. T. 33,418

(46a. Ex. 120, T. 756-9
47. T. ee,418)

1 number of committees cannot be considered as evidence
2 of illegal action taken on the part of this defendant,
3 either aggressive or otherwise. The witness HOSHINA
4 gave a detailed explanation of the actual operation
5 of the Naval Affairs Bureau in its liaison work
6 through many official committees. ⁴⁸ He stated: ⁴⁹

7 "Because there were so many committees, with
8 the exception of important committees which chiefs
9 of bureaus and sections themselves attended, in most
10 cases the principal persons within the bureaus attended
11 these committee meetings, so it was not often that
12 OKA attended in person."

13 Then follows a number of concrete examples. ⁵⁰

14 20. With respect to the assembly of the
15 Greater East Asia Conference in November, 1943, the
16 witness SHIBA testified that OKA was only one of the
17 attendants and took no part in the proceedings. ⁵¹

18 There is no evidence of any active participation by
19 the defendant in these proceedings and the fact that
20 he was present in a subordinate capacity with his
21 superior should suffice as self-explanatory.

22 21 The example cited concerning the part

23 (48. T. 33,307-19

24 49. T. 33,307.

25 50. T. 33,308 et seq.

51. T. 33,322)

1 played by OKA in a meeting of the Investigation
2 Committee of the Privy Council on October 20, 1942
3 is, likewise, self-explanatory and wholly confirms
4 the contention of the defense.⁵² It shows that he
5 imparted some information in his capacity as ex-
6 plainer and that his superior was present and then
7 spoke on policy.⁵³

8 22. The evidence is uncontradicted that
9 this defendant was never in a position to formulate
10 policy or to influence decisions made on high govern-
11 ment level. Thus we have no proof of any acts or
12 conduct which could reasonably lead to any conclusion
13 except that of performance of subordinate routine
14 duties, as required by his superiors and by the
15 naval rules and regulations. Consequently, the
16 suggested inferences raised by the prosecution must
17 be rejected as having no basis in fact.
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23 (52. PP-25
24 53. Ex. 687, T. 12,093-4)
25

VI.

POLITICAL ACTIVITY

1
2 23. The attempt by the prosecution to point
3 to political activity on the part of OKA, beyond his
4 regularly assigned duties, fails miserably. When
5 carefully analyzed, this so-called political activity
6 is reduced to a few meetings in June 1938 with KAGESA,
7 a member of the Military Affairs Bureau, who was an
8 expert on China, and KISHI, secretary to Premier KOROYE.
9 The record discloses that the purpose of these meet-
10 ings was to hear explanations and reports with regard
11 to China, and it was then the duty of OKA to report
12 to the vice minister and the Chief of the Naval Affairs
13 Bureau.⁵⁴ Thus, the attempted inference of unofficial
14 activity in an unnamed group is unfounded and not sup-
15 ported by any evidence.
16

17 24. Similarly, the attempt to prove that
18 OKA entered into an agreement, or held a conference
19 with KAGESA on August 30, 1938 to discuss plans for the
20 capture of Canton does not succeed when we examine the
21 document.⁵⁵ OKA explained it correctly on cross-
22 examination when he stated:

23 "If you glance through the contents, you
24 will note that this is nothing more than
25

54. T. 33,528

55. Ex. 3874, T. 37,433

1 information heard. This is only my presump-
2 tion, but it appears to me from this document
3 that KAGESA merely imparted information with
4 regard to the decisions made by the War Minis-
5 try and that this is a record of the report
6 made by him; but, I am totally unfamiliar -- I
7 was then and even now am totally unfamiliar
8 with the operational conditions at that time
9 and because of that I cannot say whether the
10 contents of this document are true or false." ⁵⁶

11 This description is borne out when the document is
12 itself examined. It bears only the stamp of the
13 Chief of the First Section East Asia Bureau and begins:

14 "The statement of KAGESA and OKA -- is as
15 follows:" In other words, someone is allegedly
16 reporting a statement supposedly emanating
17 from the two section chiefs. The document
18 refers to conferences between the Army and Navy
19 on plans for the capture of Canton, then cites
20 some of the difficulties encountered and closes
21 with this observation: "However, it is believed
22 probably that either the Army and Navy Ministers
23 will discuss the matter privately with the For-
24 eign Minister or that it will be decided by the
25

Five-Ministers' Conference."

1 Hence it is not a conference between OKA and KAGESA,
2 as suggested, nor does it represent any action taken
3 by anyone. It certainly is far removed from the
4 description given by the prosecution as a conference
5 to consider plans by two section chiefs to capture
6 Canton.⁵⁷
7

8 25. The prosecution then repeats the positions
9 occupied by OKA on a number of liaison committees in
10 his capacity as Chief of Section One, and subsequent-
11 ly as Chief of the Naval Affairs Bureau, and points
12 to these committee positions again as conclusive proof
13 of his political activity. It refers to the Committee
14 for Liaison with the conference of the Five Ministers,
15 wherein it is shown by the exhibit itself that the
16 Five-Ministers' Conference appointed certain office
17 holders as committee members and secretaries so that
18 the appointment accompanied the office.⁵⁸ Again, there
19 is no evidence of any action or participation outside
20 the mention of this regular functional appointment,
21 which does not support any inference of the commission
22 of illegal political activities. At most, such com-
23 mittee appointments would provide conduits for the
24 execution of policies formulated by the government,
25

57. PP-30

58. Ex. 3457, T. 37,365

1 which is the only logical conclusion that can be in-
2 ferred.

3 26. With respect to OKA's receipt of a de-
4 coration from the Nazi Government in February 1940,
5 the prosecution admits that it does not prove his
6 participation in the Tripartite negotiations, obviously
7 because he was in no position to do so, but weakly
8 suggests that it proves he was favorably disposed to-
9 ward Germany. That is another assumption unsupported
10 by any evidence. When it was suggested on cross-
11 examination that he might have received that decoration
12 for possible services in connection with the Anti-
13 Comintern Pact, OKA stated that he had nothing to do
14 with that Pact, and frankly admitted he did not know
15 why he had been given the decoration.⁵⁹ In so far as
16 his appointment on the Military Commission in 1941
17 under the Tripartite Pact is concerned, it is obvious
18 from the memorandum setting up the commission that
19 he was not a regular member charged with the task of
20 executing the Pact. This was entrusted to a General
21 Commission consisting of the Imperial Japanese Minister
22 for Foreign Affairs, the German Ambassador and the
23 Italian Ambassador. The memorandum then provided
24 as follows:
25

59. T. 33,453

1 "The military and economic commissions con-
2 vene either upon invitation from the appertain-
3 ing general commission, or when the necessity
4 arises to discuss questions which come up. In
5 each case they will submit their proposals to
6 to the general commission."⁶⁰

7 27. As a matter of fact, OKA testified that
8 he performed no actual services on the Military Com-
9 mittee and only two perfunctory meetings were held
10 at which time a written report was read explaining
11 past events in the war.⁶¹ This is confirmed by the
12 testimony of Kretschmer.⁶²

13 28. It is regrettable that much time and
14 paper must be consumed in endeavoring to reply to the
15 assumptions and conclusions based on mere committee
16 appointments and the constant repetition of those
17 appointments is really deplorable. We do not propose
18 to repeat the statements heretofore made concerning
19 these committees, except to assert that the additional
20 attempted conclusions are, likewise, unsupported by
21 any evidence.
22

23 29. In a further attempt to show OKA's
24 political activities were outside his regular duties,

25 60. Ex. 539, T. 6,420
61. T. 33,417
62. Ex. 2751, T. 24,616

1 the prosecution again proves the contrary to be true
2 in the two references made concerning TOYODA and
3 YONAI.⁶³ The record shows that he made a report
4 under orders from Minister OIKAWA who approved of
5 TOYODA as Minister of Commerce and Industry, and that
6 he was actually carrying out the orders of his superior.⁶⁴
7 The same thing is admitted to be true when he acted
8 under orders from Minister NOMURA to sound out YONAI
9 as a prospective cabinet member.⁶⁵ Former Minister
10 OIKAWA also testified that OKA acted only under or-
11 ders.⁶⁶ Consequently, the attempt to infer political
12 power and activity outside his regularly assigned
13 duties is unfounded and wholly unwarranted.

14 . VII.

15 ATTENDANCE AT IMPERIAL AND LIAISON CONFERENCES AND
16 INVESTIGATION COMMITTEE MEETINGS OF THE PRIVY COUNCIL.

17 30. It is unquestioned that OKA attended the
18 Imperial and Liaison Conferences and Investigation
19 Committee meetings of the Privy Council, but never as
20 a member. It is also undisputed that he could not vote
21 at said conferences or meetings and could not even take
22 part in the discussions in order to express his opinions.
23

24 63. PP-36-37

25 64. Ex. 3216-A, T. 29,176

65. T. 33,348

66. T. 33,340

1 When called upon to give information on matters involv-
2 ing the Navy, he was permitted to make the necessary
3 explanation. A clear, concise and uncontradicted
4 account of OKA's status at the aforementioned con-
5 ferences and meetings was given by former Navy Minister
6 OIKAWA in the following testimony:

7 "OKA attended the Liaison Conferences in the
8 capacity of 'Kanji' or Secretary, but was
9 'Jimukan' or Official Clerk of the Conference,
10 and not a member of the Conference. Therefore,
11 he did not affix his signature to matters taken
12 up at the Conference. In the capacity of Sec-
13 retary, OKA could only make explanations at the
14 Conference when he was asked to do so by a mem-
15 ber of the Conference. He had no part in the
16 discussion, and he had nothing to do with the
17 making of any decisions whatsoever. His primary
18 duty was to supply information to the members
19 when called upon to do so.

20 "OKA likewise usually attended the Imperial
21 Conferences with the Navy Minister is not cr-
22 dered to go elsewhere. His presence at the
23 Imperial Conference gave him no right of ex-
24 pression or voting, and he had no voice at the
25 Conference.

1 "OKA, as Director of Naval Affairs Bureau,
2 attended the meetings of the Investigation Com-
3 mittee of the Privy Council as 'explainer' only
4 when investigation involved matters pertaining
5 to the Navy, he was never permitted to express
6 himself or vote at such meetings, and could
7 not take part in the decisions which were ar-
8 rived at. It was his duty to present data which
9 was required by the Navy Minister when he spoke
10 at such meetings. There were also 'explainers'
11 from other Ministers, who attended these meetings,
12 but their presence did not affect the decisions
13 reached at such meetings. The preparation of
14 the agenda for these meetings was prepared by
15 the Privy Council itself, and OKA, as the Direc-
16 tor of Naval Affairs Bureau, did not attend the
17 meetings of the Privy Council."⁶⁷

18 31. The testimony of the defendant TOJO⁶⁸ and
19 OKA's own testimony⁶⁹ fully corroborate the fact that
20 OKA could not participate in the discussions or de-
21 cisions arrived at during the foregoing conferences
22 and attended only in a subordinate capacity, accompanied
23 by his superior. The witness YAMAMOTO, Kumaichi
24

25 67. T. 33,339-40
68. T. 36,498
69. T. 33,412-3

1 testified that the work of the secretaries was the
 2 gathering and preparation of subjects for discussion
 3 at the Liaison Conferences, and also the summing up
 4 of subjects already discussed at the Liaison Confer-
 5 ences. He also stated that the secretaries could
 6 not express their own opinions. The exhibits also
 7 verify that he attended only as an explainer or expos-
 8 itor.^{71, 72, 73, 74, 75} The attempt of the prosecution
 9 to still infer that OKA's attendance gave him some
 10 share in the responsibility for decisions reached is
 11 thus contrary to all the facts and the evidence. The
 12 exhibits referred to by the prosecution will be con-
 13 sidered briefly in order to remove all possible doubts.

14 32. The reference to the certificate from the
 15 Japanese Central Liaison Office as proof of the fact
 16 that OKA was not present as an explainer, but that he
 17 participated in the discussion,⁷⁶ is mystifying because
 18 the certificate says: "For the purpose of giving
 19 explanations."⁷⁷ The allusion to the Investigation
 20 Meeting of October 20, 1942⁷⁸ also shows a question
 21 was asked and OKA explained what areas were in charge
 22 of the Navy. It also shows his superior was present
 23

24 70. T. 26,160

25 71. Ex. 649, T. 7069

72. Ex. 1241, T. 10691

73. Ex. 1265, T. 11,304

74. Ex. 1275, T. 11,364

75. Ex. 687, T. 7,421

76. PP-40

77. Ex. 1107, T. 10,140

78. PP-40

and spoke on policy.⁷⁹

1 33. In referring to the Investigation Com-
2 mittee Meeting of July 28, 1941, the prosecution en-
3 deavors to infer that OKA participated in the decision
4 when all members signified their unanimous consent by
5 standing up.⁸⁰ An examination of the exhibit shows
6 that he was not listed as a member. The Navy Minister
7 was listed as a member. When a vote was called by the
8 Chairman, the record then states: "(all members
9 stand up)."^{80a}
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23 79. Ex. 687, (p.16) T. 12,070

24 80. PP-41

25 80a. Ex. 650, (p.7) T, 7074

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34. The alleged contradiction pointed out
 1 by the prosecution concerning OKA's attendance at meet-
 2 ings without his superior may be due to an unintentional
 3 misconception. OKA testified that he was never pre-
 4 sent at Liaison Conferences without his superior and
 5 pointed to the testimony for verification.⁸¹ The sub-
 6 sequent statement that he attended committee meetings
 7 only in the company of the Navy Minister as "explainer"
 8 in order to submit materials which he needed was
 9 obviously not intended as the same thing -- nor is it
 10 important when we note that at neither of the committee
 11 meetings referred to is it shown that OKA took any
 12 part therein.⁸²

35. The additional references to the Liaison
 14 Conferences corroborate OKA's status as an aide to the
 15 Navy Minister, and that he was never in a position to
 16 formulate policies or participate in decisions of the
 17 conferences. Again he is shown at most to have occu-
 18 pied the status of a conduit to execute and carry out
 19 the decisions of his superiors.
 20

21 VIII. FRENCH INDO-CHINA.

22 36. On October 15, 1939, until October 15,
 23 1940, OKA served as Chief of the Third Division, Naval
 24 General Staff, which division had charge of gathering
 25

81. T. 33,412.

82. T. 12,094; T. 11,364.

1 and investigating military intelligence and was not
2 concerned with operations or current problems. There-
3 fore, he did not participate in the Japanese-French-
4 Indo China Protocol.⁸³ Nevertheless, the prosecution
5 for the first time in this trial attempts to charge
6 OKA with the responsibility for the advance into Indo-
7 China.⁸⁴ This charge is made in a mass of contradictions,
8 erroneous assumptions, and unsupported conclusions.

9 37. Again it is by virtue of his official
10 position as Chief of the Third Division and a member
11 of the Naval Staff in Imperial Headquarters which
12 supposedly determines his responsibility. Exactly
13 how he is responsible is not clear, except that he was
14 connected with military intelligence and must have set
15 up a naval espionage organization, which was supposedly
16 functioning a year later in October 1941.⁸⁵ The exhibit
17 referred to mentions several espionage organizations
18 but does not show when they were set up or by whom.⁸⁶
19 It is evidently somebody's guess that OKA was respon-
20 sible, but not a very accurate one. Why OKA was not
21 cross-examined on this charge is indeed very strange
22 unless, of course, it merely appeared as an afterthought.
23
24 It was not mentioned in the summary at the close of
25

83. T. 33,384.

84. PP-51.

85. PP-51.

86. Ex. 1325, T. 11,885.

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the prosecution's case.

1 38. The prosecution admittedly knows that
2 the person who represented the navy in the plan to
3 secure the cooperation of French Indo-China between
4 October, 1939 and October, 1940 was ABE, Katsue, Chief
5 of the Naval Affairs Bureau. ⁸⁸ This witness testified
6 at length concerning the part played by him in con-
7 junction with the Naval General Staff in making arrange-
8 ments to occupy French Indo-China. ⁸⁹ In view of OKA's
9 previous statement (supra) that he had no connection
10 with operations, it is difficult to understand the
11 prosecution's assumption, which attempts to make much
12 of his position also as a member of the Naval Staff
13 in Imperial Headquarters. This, however, was only a
14 nominal title and his work in the gathering and inves-
15 tigation of military intelligence remained unchanged
16 until October 1940. OKA testified that he never
17 attended a conference at Imperial Headquarters and never
18 served therein. ⁹⁰ Additional evidence on this point
19 appears elsewhere herein. ⁹¹

22 39. The additional committee appointments
23 referred to by the prosecution are exactly in the same
24 category as the previous committee references and again

25 87. T. 16,968-76.

90. T. 33,415.

88. PP-49.

91. Para. 42.

89. T. 26,871.

1 infer no responsibility or action taken therein. There
2 is no evidence which contradicts the affirmative
3 statement that OKA could not and did not actually serve
4 on all the committees to which he was perfunctorily
5 appointed,⁹² nor would such service be any proof of
6 planning or formulating the policies which may have
7 been referred to special committees for study.

8 40. The attendance by OKA at certain Liaison
9 and Imperial Conferences wherein policies were adopted
10 towards Indo-China and Thailand, does not infer any
11 responsibility on his part in view of the previous
12 proof of his status at such conferences (supra).
13 Consequently, no additional reply is deemed necessary
14 to the remaining conferences referred to and the alleged
15 inferences raised thereby. Also, the fact that his
16 personnel chart sets forth his appointment as a follower
17 to the Imperial Commissioner arbitrating the dispute
18 between Siam and Indo-China does not prove that he
19 participated therein. This is a mere conjecture which
20 again has been raised in the summation for the first
21 time.
22

23 41. The prosecution continues its highly
24 imaginative and absurd attempts to have the court infer
25 that OKA planned and executed the invasion of Indo-China,
92. T. 33,307-08.

1 then shares responsibility for the Imperial Headquarters
2 decision to resort to arms and finally because of his
3 position must have done it. In April, 1941, OKA was
4 Chief of the Naval Affairs Bureau which was not involved
5 in operations. Because he also had the nominal title
6 of aide to the Navy Minister in Imperial Headquarters,
7 the prosecution thereby assumes without any proof that
8 he participated in the operational decisions of
9 Imperial Headquarters.⁹³ However, Minister OIKAWA
10 testified that OKA never attended any of the con-
11 ferences of Imperial Headquarters.⁹⁴ This nominal title
12 was also explained by several other witnesses.⁹⁵

13 42. The publication of a pamphlet by the
14 Planning Board in April 1941 setting forth the funda-
15 mental principles of Japan's population policy as
16 decided by the cabinet is next foisted upon OKA because
17 of his designation as a councillor of the Planning
18 Board.⁹⁶ The fact that he was not a member of the Plan-
19 ning Board and could not take part in its decisions
20 does not appear to be important. There is no proof
21 that he ever knew of the existence of such a pamphlet,
22 or performed any acts in the capacity of a councillor.
23 Here again the charge is made for the first time in
24

25 93. PP-57.

94. T. 33,341.

95. Ex. 2980, T. 26,423; Ex. 3565, T. 34,676.

96. PP-58.

the summation.

1 43. After citing a few more Liaison and
2 Imperial Conferences and Privy Council meetings and
3 the decisions reached with respect to French Indo-
4 China, the prosecution then concludes that OKA must
5 have been responsible for sharing in all these plans
6 and decisions because of his positions as Chief of
7 Section Three and Chief of the Naval Affairs Bureau. 97
8 To draw such inferences in the light of the actual
9 evidence is to disregard all intelligent reasoning
10 and to substitute fiction for logical facts.
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97. PP-64.

IX.

NEGOTIATIONS WITH THE UNITED STATES.

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44. The proof is overwhelmingly to the effect that the navy was opposed to war against the United States and Britain, and took all steps consistent with its obligation as a branch of the fighting services to express and support that position. It has been shown through the testimony of the former Navy Minister during the negotiations in 1941, that the navy endeavored to avoid war with the United States and that OKA consistently supported this view.^{98.} He asserted OKA's position in the following words: "I had many conversations with OKA concerning the Japanese-American negotiations and he expressed himself strongly in favor of continuing such negotiations."^{99.}

45. It is incontrovertible that OKA was in complete sympathy with the stand taken by Navy Minister OIKAWA in favor of the successful conclusion of the Japanese-American negotiations, and that he exerted all his efforts to that end. Besides the testimony of his superior referred to above, we also have the testimony of the men who worked under OKA at

98. Ex. 3470, T. 33341-3.
99. T. 33343.

1 the time of the negotiations. The witness TANAKA,
2 Toshitane, testified that: "OKA exerted his efforts
3 to the best of his ability with the idea of avoiding
4 war with the United States."^{100.} He then described
5 in detail the affirmative steps taken by OKA in his
6 drive to support the negotiations and described OKA's
7 viewpoint on the question of the removal of the troops
8 from China in these words: "With respect to the
9 difficult point on the American-Japanese negotiations
10 involving the question of the withdrawal of troops
11 from China, OKA stated that he favored their with-
12 drawal so that the China Incident would be settled
13 promptly so that Japan should not plunge into war
14 with the United States, and he exerted his best
15 efforts to avoid such war."^{101.} He further testi-
16 fied that OKA was greatly enthused over the proposed
17 Roosevelt-KONOYE meeting and made secret arrangements
18 to have a ship prepared for the delegation.^{102.} It
19 further appears that OKA was tentatively selected by
20 Navy Minister OIKAWA as one of the members of the
21 suite to accompany KONOYE, "because of his intense
22 interest in the negotiations."^{103.} According to the

24 100. T. 33366, lines 1-3.

101. T. 33368.

25 102. T. 33367.

103. T. 33341.

witness SHIBA when the negotiations broke down in
104.

1 November 1941 OKA actually shed tears.

2 46. The defendant OKA testified that
3 Navy Minister OIKAWA held high hopes that the
4 American-Japanese negotiations would be concluded
5 and averted everything in his power to that end.
6 He stated further, "As director of the Naval Affairs
7 Bureau, I had charge of the routine handling of this
8 matter in the Navy Ministry and exerted my best
9 efforts towards the successful conclusion thereof."¹⁰⁵

10 OKA further testified on redirect examination that
11 Navy Minister OIKAWA advocated withdrawal of the
12 Japanese troops from China and that he supported that
13 view.¹⁰⁶

14 All the foregoing evidence of OKA's posi-
15 tive interest in and desire for the successful con-
16 clusion of the negotiations is uncontradicted. How-
17 ever, the prosecution attempts to minimize it by
18 saying the evidence is of no value since it shows
19 OKA hoped to achieve the aims of the conspiracy by
20 diplomatic methods.¹⁰⁷ This contradictory statement
21 places OKA in the position of conspiring to wage
22 aggressive war by diplomatic methods!

23 104. T. 33321, line 14.

24 105. T. 33387.

106. T. 33528.

25 107. PP-73.

1 47. The belabored attempt to prove that
2 this defendant exerted great influence over the
3 formula for the Japanese-American negotiations and
4 that he was responsible for its failure is, likewise,
5 contrary to the facts. The real situation is factually
6 depicted hereafter: The conversation for the readjust-
7 ment of Japanese relations began in secret in
8 December, 1940, between Bishop Walsh and Colonel
9 IWAKURO and Mr. Tadao IKAWA in a private capacity.
10 By April, 1941, the plan was taken up by the two
11 governments and on April 8th the first tentative plan
12 was presented by the American side, after which the
13 Japanese side drew up a second tentative plan.
14 Mr. Hull then stated that negotiations might be con-
15 ducted with the second tentative plan as a basis.
16 On April 18, 1941 KONOYE received a dispatch from
17 NOMURA containing the "Proposal for Japanese-American
18 Understanding," and he called a meeting to consider
19 it the same night. The persons he invited to the
20 conference were described in the following language:
21 "The government was represented by the Premier, the
22 Home Minister, the War and Navy Minister and also by
23 Mr. OHASHI, Vice-Minister of Foreign Affairs. The
24

25 108. Ex. 2866, T. 25673.
109. Ex. 1061, T. 9866.

1 chiefs of the Army and Naval General Staffs repre-
 2 sented the Supreme Command. Also present were the
 3 directors of the Military Affairs Bureau of the War 110.
 4 and Navy Ministries, and the Chief Cabinet Secretary.
 5 In other words, the Government and Supreme Command
 6 leaders were the participating members and the
 7 defendant was again present with his superior in the
 8 same capacity which he assumed at other liaison
 9 conferences between the government and the Supreme
 10 Command, where Navy Minister OIKAWA testified he had
 11 no say. 111.

12 48. The proposal was adopted by the 112.
 13 participants with certain conditions attached.
 14 The army, navy and TERASAKI of the Foreign Office
 15 wanted to cable "acceptance in principle" of the
 16 proposal, but it was vetoed by OHASHI, the Vice-
 17 Minister of Foreign Affairs, who insisted that Foreign
 18 Minister MATSUOKA, who was then out of the country,
 19 must first approve it. 113. Thereafter the Foreign
 20 Minister personally revised the formula previously
 21 referred to and it was approved by the participating
 22 members of the conference, on the whole, at the
 23 meeting of May 3, 1941. 114. One of the main points

25 110. Ex. 2866, T. 25695. 113. Ex. 2866, T. 25698.
 111. T. 33339. 114. Ex. 2866, T. 25700.
 112. Ex. 2866, T. 25697.

1 proposed by the Foreign Minister was deletion of
2 Japan's declaration not to carry on a southward
3 military advance. Although the demand to submit
4 this revised plan immediately was overwhelming, the
5 Foreign Minister still stubbornly refused until a
6 neutrality treaty was proposed. Thereafter there was
7 intense feeling against the Foreign Minister who
8 delayed sending the text of the revised proposal
9 until May 11, 1941, so that it was not presented by
10 NOKURA to Hull until May 12, 1941. ^{115.} Up to this
11 point it is obvious that the defendant OKA had no
12 part in drafting the formula or any influence in the
13 revision thereof as suggested by the prosecution. ^{116.}

14 49. Thereafter a counter proposal was re-
15 ceived from America on June 21, 1941. ^{117.} This was
16 considered at Liaison Conferences held on July 10th
17 and 12th. ^{118.} At this time the Prime Minister and the
18 Army, Navy and Home Ministers were opposed to the
19 Foreign Minister who was clearly taking a stand
20 against the negotiations, and at the joint conference
21 on the 12th the army and navy made a statement of
22 their opinion. ¹¹⁹ Then MITSUOKA agreed to draw up

24 ^{115.} Ex. 3655, T. 36223-5. T. 36228-29.

25 ^{116.} PP-67/

^{117.} Ex. 1092, T. 10005.

^{118.} Ex. 2866, T. 25745.

^{119.} T. 25747.

1 the Japanese counter-proposal upon the basis of
2 the army and navy views and after the conference
3 on the 12th, a meeting of the administrative repre-
4 sentatives of the respective government departments
5 were held to prepare the draft of the proposal in
6 accordance with the foregoing agreement. ^{120.} This
7 is the part referred to by the prosecution as the
8 actual revision made by this defendant. It is clear
9 that the interpretation offered by the prosecution
10 that he prepared the joint statement of the army and
11 navy and then prepared the revised formula is
12 ^{121.} contrary to the true facts.
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120. Ex. 1115, T. 10161.
121. PP-70.

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MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. Roberts.

3 MR. ROBERTS: Continuing on paragraph 50:

4 It was also pointed out by the former
5 vice-minister of the Foreign Office that the Foreign
6 Office took the leading part in drafting the formula
7 for the later negotiations; that all important points
8 of policy in connection with the negotiations were
9 decided in the liaison conferences, and that meetings
10 with various bureau chiefs concerned with the negotiations
11 were held by him.¹²²

12
13 51. In contrast with the affirmative proof
14 offered by the defense which clearly establishes
15 OKA's positive efforts towards the successful conclusion
16 of the negotiations what evidence does the prosecution
17 offer in an attempt to prove his opposition? We have
18 only a series of assumptions based upon his attendance
19 at several Liaison Conferences which "presumably"
20 considered the United States proposal,¹²³ again
21 ignoring the fact that OKA could not participate in
22 these decisions, from which we are asked to further
23 conclude that he was thus opposed to making any
24 concessions.¹²⁴

122. Ex. 2915, T. 25,908-9

123. FP-66

124. PP-67

1 52. Then we have a reference to the extract
2 ¹²⁵
3 from KIDO's Diary concerning the revision after
4 the meeting July 12,1941, and this is claimed as
5 proof of OKA's authorship despite KIDO's testimony
6 on direct examination that OKA did not play an important
7 part in the revision of the formula and was only an
8 ¹²⁶
9 assistant. The prosecution also attempts to turn
10 this testimony against OKA by trying to suggest that
11 KIDO meant something else. Finally when OKA in his
12 testimony denied having any influence on the formula
13 for the negotiations and remarked quite logically
14 that a Bureau Chief could not be responsible for a
15 task of such magnitude, ¹²⁷
16 the prosecution attempts
17 to turn his denial into an admission because of the
18 manner of his denial. ¹²⁸
19 Consequently, it is respectfully
20 submitted that the foregoing inferences suggested
21 by the prosecution based upon the defendant's attendance
22 at certain conferences are successfully rebutted by
23 the evidence, and the attempted characterization of
24 the defendant as one of the leaders in opposing the
25 negotiations is contradicted by the facts.

X.

PEACE TERMS WITH CHINA

125. Ex. 1115, T. 10,161
126. T. 31,237-8
127. T. 33,390
128. PP-71

1 53. The belabored efforts of the prosecution
2 to build a case against this defendant are very
3 sharply exposed in the fantastic attempt to infer
4 that he wrote the basic terms for settling the
5 China Affair in collaboration with MUTO. This is
6 one of many joint linkings of these two names in an
7 insidious manner to imply an evil conspiratorial
8 association by pure insinuation. It is asserted that
9 OKA and MUTO held a conference at the official residence
10 of the Foreign Minister and stated the terms of peace
11 as proven by Exhibit 3456 but an examination of this
12 document¹²⁹ reveals that a conference was held at
13 the Foreign Minister's official residence which was
14 also attended by the Directors of the Military Affairs
15 Bureau and the Naval Affairs Bureau.¹³⁰ On cross-
16 examination MUTO explained the procedure as a meeting
17 with other authorities where they presented the views
18 of their respective ministers. Thereafter the plan
19 discussed (sic) was placed before the Liaison
20 Conference for discussion and there adopted by the
21 members to become national policy.¹³¹ When we recall
22 that OKA was not a member and had no vote at the
23 conference of September 6, which apparently adopted
24

25
129. T. 33,192
130. T. 33,192
131. T. 33,195

1 the plan, we then perceive the utter lack of evidence
2 to support the prosecution's assumptions. OKA also
3 properly described the document on cross-examination
4 as follows: "I said that it appears to be a plan
5 formulated by the Foreign Office, and that representatives
6 of the Army and the Navy were called into consultation
7 to discuss the plan."¹³² Thereafter the Imperial
8 Conference of 5 November, 1941 reached a further
9 decision concerning disposal of the China Incident
10 in which OKA again had no vote as a member. It is
11 irrefutable that the inferences drawn concerning OKA's
12 influence in the China Peace Terms are not supported
13 by the evidence, which indicates he had no voice in
14 the policies adopted; as a matter of fact, OKA's
15 private views were contrary to the implications
16 suggested by the prosecution, as he affirmatively
17 stated on redirect examination that he supported the
18 view of Navy Minister OIKAWA who advocated the with-
19 drawal of the Japanese troops from China.¹³³ The
20 witness TAKATA also testified as follows: "With
21 respect to the difficult point in the American-Japanese
22 negotiations involving the question of the withdrawal
23 of troops from China, OKA stated that he favored

25 132. T. 33,489
133. T. 33,528

1 their withdrawal so that the China Incident would be
 2 settled promptly so that Japan should not plunge into
 3 war with the United States, and he exerted his best
 4 efforts to avoid such war."¹³⁴

5 XI.

6 FALL OF THE KONOYE CABINET

7 54. Affirmative evidence of OKA's attitude
 8 and position in favoring the continuance of the
 9 Japanese-American negotiations during the Third KONOYE
 10 Cabinet, is clearly set forth in his direct testimony,
 11 and has not been contradicted in any respect.¹³⁵

12 Navy Minister OIKAWA testified that the Navy did all
 13 it could to avoid war and this sentiment among naval
 14 circles was communicated to Premier KONOYE. He also
 15 stated that his reason for entrusting the final decision
 16 concerning continuance of the negotiations to the
 17 Prime Minister was fear of disruption of national
 18 opinion resulting in a grave internal problem.¹³⁶ It
 19 is, likewise, clear that the position and policies
 20 of the Navy were determined by Minister OIKAWA and
 21 that the suggested influence of OKA is a gross exaggeration
 22 of the facts.¹³⁷ OKA testified that the Navy remained

- 23
 24 134. T. 33,368
 25 135. T. 33,391-8
 136. T. 33,342
 137. T. 33,343

1 adamant in its position that war should be avoided
2 if at all possible;¹³⁸ further, that he was in no
3 position to issue any official statements on behalf
4 of the Navy, and his participation in the negotiations
5 were his official acts as liaison officer conveying
6 the messages of his superior.¹³⁹ It has been shown
7 nevertheless through the testimony of the Navy Minister,
8 that in their conversations OKA always expressed
9 his self strongly in favor of continuing the negotiations.¹⁴⁰

10 55. The implication that OKA voluntarily
11 retained his position as Chief of the Naval Affairs
12 Bureau when the TOJO Cabinet was formed, to further
13 imply some sinister motive, is also contrary to the
14 evidence. It was shown that OKA remained because of
15 his term of shore service had another year to run,
16 and that it was not customary to shift those below
17 vice-minister upon the appointment of a new minister.
18 It was also shown by competent proof that he was
19 not permitted to resign upon the change of ministers;
20 that he tendered his resignation and it was refused;
21 that he was told by his superior to remain, and to
22 continue to do everything in his power to bring
23 about a compromise in the negotiations.¹⁴¹

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138. T. 33,392
139. T. 33,394
140. T. 33,343
141. T. 33,343-4

1 56. The various references to the differences
2 of opinion between the Premier, the Army and the Navy
3 Ministers is very significant of the strong stand
4 taken by each according to his own convictions.

5 Judging from the prosecution's version of the
6 negotiations in October, 1941 all the decisions were
7 in the hands of Bureau Chief OKA who spoke not only
8 for the Minister of the Navy, but ostensibly was
9 able to overrule him. This is sheer nonsense. After
10 the Navy Minister had already taken the position that
11 he would leave the decision to the Premier, it is
12 quite logical that his subordinate could not make a
13 statement contrary to that position, nor is there
14 any proof, as insinuated by the prosecution, that he
15 had the power to alter that position.¹⁴²

16 The testimony
17 of the Minister and OKA are both emphatic on this
18 point and cannot be rebutted by mere insinuation.¹⁴³

19 Admiral OIKAWA said, "It is incontrovertible that at
20 that time OKA was my subordinate and was in no position
21 to make any decision on his own authority as to whether
22 or not the Navy could wage war."¹⁴⁴

23 The evidence
24 indicates that his subordinate position gave him no
25 opportunity to participate in any political decisions

142. PP-81
143. T. 33,304
144. T. 33,343

1 and the observation that he did so participate as
2 an indication of his willingness to plunge Japan into
3 war is directly contrary to the facts.

4 56.^a The testimony of Toshitane TAKATA,
5 who was OKA's subordinate at the time, is again
6 recalled to this Tribunal to conclusively establish
7 OKA's strong personal feelings against a war with the
8 United States.¹⁴⁵

9 XII.

10 THE DECISION FOR WAR.

11 57. The parade of unsupported assumptions
12 continues with ever-increasing vigor. Next we are
13 invited to assume that OKA knew of the plan to attack
14 Pearl Harbor, because it was debated at the Naval War
15 College and two officers from the Naval Affairs Bureau
16 attended.¹⁴⁶ Of course, the prosecution neglects to
17 mention that this was only a war game where officers
18 from the Ministry acted as umpires.¹⁴⁷ The testimony
19 of the defendant TOJO that he and the Navy Minister
20 were the only persons besides the High Command who
21 knew of this plan, should be sufficient to rebut this
22 assumption.¹⁴⁸ The parade continues with a list of

24 145. T. 33,368

25 146. PP-83

147. Ex. 809, T. 11,230

148. Ex. 3655, T. 36,408

liaison conferences held in November, 1941 which made

1 certain decisions still without any vote from OKA,
2 and does not even hesitate to assume approval by
3 OKA of a conversation concerning the use of military
4 currency addressed to the minister for his approval,
5 despite the fact that not even a reply is shown to
6 have been made by the minister. This charge as well
7 was not previously raised against this defendant
8 and is implied for the first time in the summation.

9
10 58. Similarly the attempt to connect this
11 defendant with the plan to attack Pearl Harbor is
12 obviously misleading and unsupported by any evidence.
13 The mistranslation in the extract from the interrogation
14 of NAGANO was pointed out to the court as a gross
15 error,¹⁴⁹ as it was clear that there was no intention
16 to include the Naval Affairs Bureau as a participant
17 in the discussion of the YAMAMOTO Plan. Nevertheless
18 the prosecution again refers to this mistranslation
19 as if it were only a defense objection.¹⁵⁰ The exhibit
20 reveals the obvious confusion between the names
21 "Naval Operational Bureau," and "Naval Affairs Bureau."
22 This attempt to imply knowledge under such circumstances
23 is obviously misleading and is not cured by a later

24 149. T. 10,465

25 150. PP-87

1 reference to some second-hand report which alleges
2 that the Chief of the Naval Affairs Bureau knew a
3 part of the plan.¹⁵¹ It is irrefutable from the
4 prosecution's own evidence that the plan to attack
5 Pearl Harbor was conceived by Admiral YAMAMOTO, was
6 ordered on November 3, 1941 by Admiral NAGANO and the
7 details were worked out by members of the Naval General
8 Staff Operations Section, the Combined Fleet Operations
9 Staff, and First Air Fleet Operations Staff.¹⁵²

10 This was also corroborated by the witness HOSHINA.¹⁵³
11 That fact that this defendant may have learned about
12 some of the details by indirect methods certainly
13 cannot fix him with any responsibility for the
14 adoption or execution of said plan, and his attendance
15 at the Imperial Conferences of 5 November and 1 December
16 without the right to participate in the discussion
17 or voting is again no criterion of his responsibility
18 for the decisions adopted therein.
19

20 59. The final note to the United States
21 was drafted by the Foreign Office and submitted to
22 the Cabinet and Liaison Conference for approval.¹⁵⁴
23 The prosecution again attempts to imply that OKA was

24 151. Ex. 809, Page 67, T. 11,230
25 152. Ex. 809, Page 66, T. 11,230
153. Ex. 3468, T. 33,305-6
154. Ex. 2915, T. 26,096

1 responsible as a participating member at the above-
2 mentioned Liaison Conference, but the evidence shows
3 him only present as a secretary, separate and apart
4 from the participating members.¹⁵⁵ OKA testified that
5 the draft was submitted to his department in the
6 usual course of conduct, and that it was handled
7 by his subordinates. That he felt the note was
8 inadequate and suggested the addition of the phrase,
9 "we reserve the right to freedom of action," to clarify
10 it. That the suggested revision was related to Mr.
11 YAMAMOTO of the Foreign Office, but it was not adopted.
12 That he was informed that the note was a final note
13 and relied upon the Foreign Office authorities because
14 of his lack of the correct diplomatic procedure.¹⁵⁶
15 The facts concerning the suggested revision were
16 corroborated by the witness, SHIBA, who was OKA's
17 subordinate to whom the draft was referred for study
18 and who wrote the suggested change on the draft.¹⁵⁷
19 The prosecution states the foregoing proof is unworthy
20 of consideration and attempts to rebut it through
21 YAMAMOTO's denial. However, before this point became
22 an issue YAMAMOTO stated that the draft of the note
23

24 155. Ex. 1207-A, T. 10,509
25 156. Ex. 3473, T. 33,400-01
157. Ex. 3469, T. 33,322

1 was given to the various ministers who made some
2 suggestions and changes. ¹⁵⁸ Subsequently when
3 questioned on cross-examination about OKA's suggestion
4 he admitted having several conversations with him
5 about the note. ¹⁵⁹ Finally he denied receiving any
6 suggested change but on cross-examination again admits
7 a discussion about the wording in the note. ¹⁶⁰

8 Although this point was mentioned by OKA only for
9 the purpose of showing his interest in clarifying the
10 situation, and also how he came to feel that the
11 final was sufficient as an ultimatum, it has been
12 belittled by the prosecution only in an unsuccessful
13 attempt to impeach his credibility. It is uncontra-
14 dicted that the time and manner of delivery of the
15 note was entrusted to the Foreign Office and the
16 Supreme Command, and that OKA had no connection there-
17 with. ¹⁶¹ This statement was corroborated by the
18 defendant TOJO. ¹⁶² OKA testified that he heard later,
19 but could not recall when, where and from whom, that
20 the note was to be delivered one hour before the
21 opening of hostilities. That after the war he heard

23 158. Ex. 2915, T. 26,096

24 159. T. 26,156-7

24 160. Ex. 3632, T. 35,563-4

24 161. T. 33,402

25 162. Ex. 3655, T. 36,390-1

163
1 that the time had been changed to thirty minutes.
2 Again the prosecution says this explanation is
3 incredible. Why? There is not only no proof that
4 the Naval Affairs Bureau ever participated in the
5 foregoing consultation, but the testimony referred
6 to above directly contradicts it, so that he would
7 have had no more opportunity to share in this ultra
8 top secret, than any other bureau head. Of course,
9 it does not fit well with the prosecution case to have
10 OKA shown without knowledge of such important information,
11 and they proceed to build him up to fantastic heights
12 by drawing fabulous conclusions from an alleged call
13 to TOGO informing him about the surprise attack on
14 Pearl Harbor. Although OKA testified that he might
15 have told TOGO, after being informed by someone, but
16 he could not recall doing so, the prosecution wants
17 to conclude that this is evidence of the fact that
18 he knew about the plan before the attack. 164 The
19 evidence points one way and the prosecution points
20 in the opposite direction.

21
22 60. A final attempt is made to prove OKA's
23 importance by implying that he wrote the Imperial
24 Rescript declaring war as well as the final note. 165

25 163. Ex. 3473, T. 33,402
164. PP92
165. PP-95

1 This assumption again is based on an admitted erroneous
2 interrogation of a third person, which is not admissible
3 against this defendant. It then appears that OKA
4 may have furnished some material for the rescript,
5 but that it really was prepared by the Cabinet.¹⁶⁶
6 Also, his signature was not appended to it. Consequently,
7 the conclusion that OKA participated in preparing the
8 Imperial Rescript, as well as the final note, is
9 directly contrary to the evidence, and is pure wishful
10 thinking for the purpose of providing another foundation
11 for a final fictitious assumption that he is charged
12 with responsibility for the decision to wage war.

13 XIII.

14 PRISONERS OF WAR

15 61. The evidence in this case has irrefutably
16 shown that the jurisdiction concerning the handling
17 of prisoners of war belonged to the War Ministry and
18 the Prisoners of War Information Bureau. The details
19 of this procedure and the regulations under which
20 the treatment of the prisoners of war was handled have
21 been set forth in detail elsewhere.¹⁶⁷ It has also
22 been shown that all prisoners captured by the Navy
23 were to be handed over to the Army and were only
24

25 166. Ex. 3454, T. 33,125

167. General Prisoner of War Summation, Section M

1 considered as temporary prisoners when held under
2 navel supervision; that at those camps the prisoners
3 of war were placed under regulations of war based on
4 international agreements to be treated as regular
5 prisoners of war. It was further shown that the
6 control of these temporary camps was in the hands of
7 the commander-in-chief of the respective major or
8 minor naval station, or the commander of the respective
9 operational force. ¹⁶⁸

10 . 62. The witness TAKATA testified that the
11 words, "prisoners of war" were not used in the
12 Ordinance on Organization of the Ministry of the Navy
13 and Regulations Pertaining to the Functions of the
14 Navy Ministry; that liaison work in connection with
15 prisoners of war was undertaken by Section 1 of
16 the Naval Affairs Bureau, and Section Two acted as
17 a reception organ handling the matter of routine. ¹⁶⁹
18 He further testified that it had been the practice
19 since the Meiji Era, and there were various regulations
20 pertaining to it, for the Navy to turn over the
21 prisoners of war captured by it to the Army, and they
22 were interned in the prisoners of war camp under the
23 control of the War Minister. That regulations were

24
25 168. Ex. 3056, T. 27,278-79
169. Ex. 3065, T. 27,359

provided for the treatment of prisoners of war,
1 which was the procedure provided for until the
2 prisoners of war captured by the Navy were turned
3 over the Army. That the rules of naval warfare
4 promulgated on October 7, 1914 provided for the
5 application of the principles of international law;
6 that the Japanese Navy provided lectures on international
7 law in the educational curriculum, and specialists
8 on international law were dispatched to the fleet
9 and gave lectures thereon. The Navy Ministry issued
10 reference books, advisory memorandum, telegrams of
11 warning, etc, to the various naval units in connection
12 with international law.
13

14 63. It thus appears that the Navy always
15 had a high standard of conduct for the observance of
16 international law, and the Navy Ministry within its
17 proper jurisdiction issued the necessary rules for
18 the administration of prisoners of war. It further
19 appears the the commander-in-chief of the fleet were
20 in a position to enforce the administration of the
21 prisoners of war on the basis of the regulations drafted
22 by the Navy Ministry.¹⁷¹ That matters concerning
23 prisoners of war in the zone of operations were handled
24 as operational matters, which were under the jurisdiction
25

170. T. 27,361
171. T. 27,362-63

of the Naval General Staff, and the Navy Ministry
172
1 was not consulted with regard thereto.

2 64. The defendant OKA also testified that
3 there was no special department in the Navy Ministry
4 for the handling of prisoners of war. That in case
5 it became impossible to immediately deliver the
6 prisoners of war to the Army, they were interned
7 by the naval unit in the field or by the naval station
8 under the jurisdiction of the commanding officer of
9 said naval station.¹⁷³ He further testified that the
10 matters relating to the prisoners of war were handled
11 by the Navy Ministry only as administrative problems,
12 the main point being the establishment, the revision
13 and the abolition of rules pertaining to the treatment
14 of prisoners of war. That the drafts of these
15 administrative problems were drawn up by various
16 assistants to the Navy Ministry who were the chiefs
17 of the various bureaus, being the Naval Affairs Bureau,
18 and depending on the matters in question, sometimes
19 the Medical Bureau and the Munitions Bureau. That
20 matters of liaison with respect to the handling of
21 the prisoners of war were handled by the Naval Affairs
22 Bureau. That requests for various requirements were
23

172. T. 27,363

173. Ex. 3473, T. 33,419; T. 33,424

referred to the necessary bureau depending on the
1 nature of the request. That the actual supervision or
2 control of prisoners of war in battle areas was under
3 the supreme authority of the commander of the fleet,
4 and in the Japanese homeland the supreme authority
5 was the commander of the naval station under whose
6 jurisdiction the prisoners of war might be interned. 174

7
8 65. The testimony of the former Navy
9 Minister SHIMADA was also to the effect that his
10 jurisdiction extended only to administrative procedure
11 relating to prisoners of war. 175 On redirect examination
12 he testified extensively concerning the handling of
13 prisoners of war by the Navy Ministry. He testified
14 that it was his responsibility to issue regulations
15 for the handling of prisoners of war in accordance
16 with the provisions of international law. The naval
17 commanders on the spot who happened to capture prisoners
18 of war were responsible for handling them in accordance
19 with regulations issued by the Minister of the Navy.
20 The commander-in-chief of the naval force had the
21 responsibility of nominating and supervising those
22 who actually handled prisoners of war. He further
23 stated that the Navy Minister was responsible for the
24

25 174. T. 33,426
175. Ex. 3565, T. 34,669

1 general control or supervision of all naval personnel,
2 but did not bear responsibility in so far as the chain
3 of command was concerned. That the matter of transfer
4 of prisoners was arranged after consultation with
5 the Army authorities, but the actual transportation
6 was the responsibility of the commander of the unit
7 handling such transportation.¹⁷⁶ The testimony of
8 SAWAMOTO, former Vice-Minister of the Navy was to the
9 same effect and he also said, "It is unthinkable,
10 therefore, that this same Ministry would have issued
11 orders commanding the commission of atrocities or
12 violation of recognized rules of warfare."¹⁷⁷

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25 176. T. 34,814-817
177. T. 34,612

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66. The explanation of the general control
1 or supervision of all naval personnel is clearly
2 distinguishable from the actual supervision over
3 prisoners of war, and the attempt of the prosecution
4 to spell it out as the same thing because of OKA's
5 use of the same terms is obviously an attempt to dis-
6 tort the facts.¹⁷⁸

67. The witness YAMAMOTO, Yoshio, also
8 corroborated the foregoing evidence in testifying
9 that the Navy Ministry only issued directions concern-
10 ing the handling of prisoners of war, and that the
11 telegrams and correspondence relating thereto provided
12 that supervision of the prisoners of war were to be
13 in the hands of the Army. That with respect to the
14 alleged atrocity on Kwajalein Island by Vice-Admiral
15 ABE, according to the set-up in the Navy, the Navy
16 Ministry could not give orders or instructions direct
17 to Admiral ABE as a commanding officer on the spot,
18 and that no such verbal orders ever came from the
19 General Staff. He also stated that the appointment
20 of the prison camp superintendent at the Yokosuka Naval
21 Station was not reported to the Navy Ministry, because
22 such a matter was within the province and jurisdiction
23 of the commanding officer. This naval station
24
25
178. PP-99.

administered the prison camp at Ofuna. The only
1 report received by the Navy was an administrative
2 report on the personnel in the camp, their names,
3 ranks, and other matters designated in the regulations
4 pertaining to the handling of prisoners of war.¹⁷⁹ He
5 further testified that he received no protests from
6 the Ofuna temporary prison camp.¹⁸⁰
7

68. All of the foregoing evidence points to
8 the same conclusion, that the Navy Ministry had juris-
9 diction only in the administrative promulgation of
10 rules and regulations relating to prisoners of war,
11 and that the direct supervision and control was within
12 the jurisdiction of the various commanders of the naval
13 stations or the fleet. The command of local officers
14 and men was under the jurisdiction of local commanders
15 and the final responsibility lay with the commander-
16 in-chief of the fleet, not with the Navy Ministry.
17 For this reason any alleged acts committed in outlying
18 islands such as Wake Island or Kwajalein, which were
19 regarded as fields of operations, were at all times
20 considered under the jurisdiction of the aforementioned
21 officers in the line of command. The Imperial Ordinance
22 concerning the organization of the fleet provides that
23

24
25 179. Ex. 3066, T. 27375; T. 27382-84.
180. T. 27384.

the commander-in-chief of the combined fleet shall
1 receive orders from the Ministry of the Navy only on
2 administrative matters.¹⁸¹

3 69. It was shown through the testimony of
4 the witness TAKATA that the Navy Ministry was never
5 consulted with respect to operations and particularly
6 with respect to submarine operations in the Pacific
7 War. That matters concerning prisoners of war in the
8 zone of operations were handled as operational matters,
9 not within the province of the Navy Ministry.¹⁸²

11 70. It was also shown during the cross-
12 examination of the defendant TOJO that the highest
13 responsibility for administration in occupied areas
14 outside of the Japanese homeland lay with the commander-
15 in-chief of the Southern Army.¹⁸³ That the commander-
16 in-chief possessed the authority of supervising the
17 prisoners of war during the period of their transporta-
18 tion from the battle area to the prisoner of war camps;
19 that the Government had no responsibility for the
20 administration of occupied areas; that the responsi-
21 bility devolved on the supreme command.¹⁸⁴ He also
22 fixed the general responsibility over prisoners of war
23 under the War Minister.¹⁸⁵ The defendant OKA, likewise,
24

25 181. Ex. 2983, T. 26432. 184. T. 36805-07.
182. Ex. 3065, T. 27363. 185. Ex. 3655, T. 36412-14.
183. T. 36804.

testified on cross-examination that control of
1 prisoners on territories occupied by the Navy was
2 entirely in charge of the commander of the fleet, and
3 that all prisoners held by the Navy were considered
4 to be on a temporary basis. That the Navy Minister
5 had no direct authority over the control of prisoners
6 of war. ¹⁸⁶

7
8 71. It naturally follows that any attempt
9 of the part of the prosecution to infer that the
10 defendant OKA by virtue of his position had juris-
11 diction over prisoners of war is directly contrary
12 to the evidence. There is not one iota of evidence
13 adduced by the prosecution to support the assumptions
14 as will be shown by an examination of the record and
15 the exhibits referred to. It is significant to note
16 that the prosecution refers only to testimony adduced
17 by defense witnesses as the source of their proof
18 against this defendant, and their attempts to construe
19 his own evidence against him are belabored and obviously
20 unsuccessful.

21
22 72. The prosecution points to a nominal
23 appointment held by the defendant as assistant to the
24 Navy Minister in Imperial Headquarters as proof of the
25 fact that he was responsible for the issuance of the
186. T. 33522.

Imperial Headquarters Order pertaining to the Burma-
 1 Thailand Railroad.¹⁸⁷ This nominal appointment was
 2 referred to previously and it was shown that the
 3 defendant OKA did not actually attend or ever partici-
 4 pate in the meetings of the Imperial Headquarters.¹⁸⁸
 5 In addition, the evidence is overwhelming that the
 6 construction of the Burma-Thailand Railroad was under
 7 the exclusive jurisdiction of the Army,¹⁸⁹ testimony of
 8 AKAMATSU, Tadaichi¹⁹⁰ and corroborated by the defendant
 9 TOJO.¹⁹¹ The reference to a number of incidents at
 10 Ofuna and certain Pacific Islands does not prove that
 11 this defendant ordered, permitted, had knowledge of,
 12 or power to curtail such incidents.
 13

14 73. It is submitted that the request for
 15 transfer of prisoners from Wake Island to China does
 16 not necessarily infer much less prove that the alleged
 17 mistreatment was committed pursuant to orders of the
 18 Navy Ministry. Furthermore, it affirmatively appears
 19 that this transfer was handled by the mobilization
 20 bureau, so that this defendant was not even remotely
 21 concerned.¹⁹²
 22

23 74. The repetition of the ABE Incident on

24 187. PP-102. 190. T. 14648.
 188. Supra, para. 38, 41. 191. Ex. 3655,
 25 189. Ex. 475 (P8), T. 5513. T. 36421-2.
 192. Ex. 3065, T. 27366.

1 Kwajalein and the reference to the testimony of the
2 witness NAKAHARA, Jiro is an obvious attempt to
3 play upon the passions of this Tribunal in an
4 attempt to cover up the lack of evidence against
5 this defendant. The exhibits referred to in both
6 cases show without a shadow of a doubt that these
7 were operational matters under the jurisdiction of
8 the Naval General Staff, and that this defendant
9 could not have had the slightest connection with
10 either incident, assuming that they did occur as
11 alleged.^{193, 194, 195} The same thing must be true
12 of the reference to the First Submarine Force
13 Secret Order Number Two, which is an operational
14 order, pure and simple.¹⁹⁶

15 75. The prosecution then attempts to prove
16 by further presumption that OKA must have received
17 some of the protests because it is alleged that copies
18 were received by his superior officer and his sub-
19 ordinate. An examination of the protests referred
20 to show them to be in reality a report sent in one
21 case concerning certain action already taken in the
22 field, which was solely within the province of oper-
23 ations so that the Navy Ministry was not involved.
24

25 193. Ex. 2055C, T. 15030. 195. Ex. 3065, T. 27381.
194. Ex. 3057, T. 27285. 196. T. 34623; T. 34636;
T. 34657.

1 In that case a report had gone to the Naval General
2 Staff and a copy was sent to the Navy Ministry for
3 reference only.¹⁹⁷ The additional reference to two
4 letters written by the Foreign Minister to the Navy
5 Minister in 1944 is no proof of the fact that these
6 letters were ever shown to this defendant, who was
7 only one of the many bureau chiefs in the Ministry.
8 Navy Minister SHIMADA denied receipt of any protests;¹⁹⁸
9 the defendant also emphatically denied receipt of
10 any protests and the only one tendered in evidence
11 addressed to his department was dated long after he
12 vacated that office.¹⁹⁹ The persistent attempts of
13 the prosecution to spell out responsibility on the
14 part of this defendant because of his nominal position
15 in Imperial Headquarters without any evidence of
16 specific acts to show his participation, indicates a
17 realization of the utter lack of any competent proof
18 of his responsibility for the mistreatment of prisoners
19 of war. This nominal position²⁰⁰ and his position as
20 Chief of the Naval Affairs Bureau are cited time and
21 again as the entire case against him.²⁰¹ This allega-
22 tion that he is responsible because of his position
23 is predominant in every subdivision of the prosecution's
24

25 197. Ex. 3066, T. 27379.
198. T. 34670.

199. T. 33420-1.
200. Supra 38, 41.
201. PP-104.

summation. But the evidence has fully established
1 that his position was never on a policy-making level.
2 Moreover, the evidence has also shown that no policy
3 was ever adopted by the Navy to mistreat prisoners
4 of war.²⁰²

5 XIV. CONCLUSION

6 76. It is respectfully submitted that in
7 view of the fact that this defendant never occupied
8 a position on high government policy-making level,
9 that he could not and did not engage in a conspiracy
10 with the other defendants to initiate or wage aggres-
11 sive war. His contacts with some of the government
12 leaders were always shown to be in the course of his
13 official duties where he always acted in a subordinate
14 capacity to perform the duties assigned to him, so
15 that if any aggressive policy was adopted as alleged,
16 he could not have participated as one of the prin-
17 cipals. He was at all times carrying out the orders
18 of his government. It also appears that the defend-
19 ant could have had no opportunity or occasion to
20 conspire with most of the remaining defendants with
21 whom he had no official contact, in view of his testi-
22 mony that he never met or spoke with the defendants
23
24
25 202. T. 33422; Defense summation, Section M.

1 KIDO, KOISO, HATA, OSHIMA, SHIRATORI, HIROTA, ARAKI,
2 DOHIHARA, MATSUI, MINAMI, UMEZU and OKAWA.²⁰³ Under
3 the rule laid down by the prosecution where no man
4 has been charged with any crimes unless he is shown
5 to be responsible for the aggressive policy adopted
6 by Japan,²⁰⁴ this defendant should not have been so
7 charged and is entitled to complete exoneration by
8 this Tribunal. Similarly in the counts charging
9 conventional war crimes and crimes against humanity,
10 the prosecution has laid down the rule that only those
11 government leaders have been charged who either issued
12 the orders or tolerated the known situation under cir-
13 cumstances amounting to formulation of a policy to
14 govern all the forces of Japan. Here as well, the
15 defendant's tenure of a subordinate position, divorced
16 from operations, gave him no opportunity to either
17 formulate policy or to correct any known situation
18 which his position gave him the power to control.
19 Consequently, he issued no orders upon which any
20 alleged crimes were based and was never indifferent
21 to any known situation which he had the power to rectify.
22

23 77. It is respectfully submitted that in so
24 far as the law and the facts apply herein the instant

25 203. T. 33400.

204. K-3.

1 case can be compared with the case of the defendant
2 Fritzche before the Nuernberg Tribunal. In that case
3 the defendant served also in a subordinate capacity
4 as department head and had no control of the formu-
5 lation of the government policies. His department
6 was one of twelve departments in the Propaganda
7 Ministry and he was present at daily conferences,
8 but similarly with his superior in attendance. Of
9 him the Court held that he was merely a conduit to
10 the press of the instructions handed to him by his
11 superior. It was also held that his activities could
12 not be said to fall within the definition of the
13 common plan to wage aggressive war. There the prose-
14 cution also asserted that he invited and encouraged
15 the commission of war crimes, but the Court exonerated
16 him completely in these terms, "His position and
17 official duties were not sufficiently important,
18 however, to infer that he took part in originating
19 or formulating propaganda campaigns."²⁰⁵
20

21 78. We contend similarly that this defend-
22 ant as a bureau head was never in a position to
23 originate or formulate government policies. That
24 all of his acts were performed in carrying out the
25 orders of his government. That he was at all times
205. Nuernberg Judgment, 17068-9.

1 merely a conduit for the transmission of the orders
2 of his superiors. It is believed that the sober
3 judgment of this Court will rise above the frenzy
4 of the moment, so that a fair and just decision based
5 solely on the acts of the accused will result in a
6 complete vindication for all career service men, who
7 serve their country with blind devotion in time of
8 stress. We borrow an apt quotation from a great
9 patriot who said: "He that would make his own
10 liberty secure must guard even his enemy from
11 oppression; for if he violates this duty he estab-
12 lishes a precedent that will reach himself."--Tom
13 Paine.
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1 THE PRESIDENT: Mr. Howard.

2 MR. HOWARD: Mr. President and Members of
3 the Tribunal:

4 KIM-1. In summing up the defense of KIMURA,
5 Heitaro, we begin by quoting from that part of the
6 Potsdam Declaration which in our submission applies
7 to this accused: "The Japanese Military Forces,
8 after being completely disarmed, shall be permitted
9 to return to their homes with the opportunity to lead
10 peaceful and productive lives."^a.

11 KIM-2. As is explicit in his personal
12 history,^a KIMURA was not in a position to participate
13 and actually did not take part in the events that
14 took place over about thirteen years from 1 January
15 1928 to his appointment as the Vice-Minister of War,
16 10 April 1941, of the period of more than 17 years
17 referred to in the Indictment.
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23 KIM-1.
a. Ex. 2, Tr. 17,146.

24 KIM-2.
25 a. Ex. 113; Tr. 727; Ex. 3347.

1 RESPONSIBILITIES OF VICE WAR MINISTER

2 KIM-3. Since most of the counts in which
3 KIMURA is mentioned are directed at the time he was
4 Vice-War Minister, we shall discuss the responsibili-
5 ties of that office.
6

7 The work of the War Ministry was conducted
8 in accordance with:
9

10 (a) Imperial Ordinance on the Organization
11 of the Cabinet;
12

13 (b) Imperial Ordinance Relating to General
14 Rules Concerning the Organization of the Ministries;
15

16 (c) Organization of the War Ministry;
17

18 (d) War Ministry General Affairs Regulations;
19

20 (a) and (b) pertained to the fundamentals
21 affecting and applicable to all ministries, and (c) per-
22 tained to the fundamentals of conducting the works
23 within the War Ministry. Other ministries also had
24 ordinances corresponding to (c), for example; there
25 was the ordinance of the Organization of the Navy Min-
26 istry and the ordinance of the Organization of the
27 Foreign Ministry.

28 a. Tr. 31,754

29 b. Tr. 70

30 c. Ex. 73

31 d. Ex. 74

32 e. Tr. 3348; ex. 3349

f. Ex. 75; tr. 17,499

g. Ex. 76; tr. 17,503

1 (d) was the one regulating the main points
 2 as to how the actual phases of conducting the Ministry's
 3 work were to be carried on. There also were similar
 4 regulations in other ministries.^h

5 We submit that, in reviewing the responsi-
 6 bility of a particular vice-minister to the minister,
 7 much importance should be placed upon the actual way
 8 that particular vice-minister conducted his work.

9 KIM-4. We, therefore, proceed first to clarify
 10 the responsibility of the Vice-Minister under the above-
 11 stated ordinances, then to elucidate some interpreta-
 12 tions of the War Minister's General Affairs Regula-
 13 tions,^a and finally to describe the actual situation
 14 under which Vice-Minister KIMURA attended to business
 15 during his tenure of office.

16 KIM-5. The functional responsibility of the
 17 vice-minister of each ministry is defined by the
 18 Imperial Ordinance Relating to General Rules Concerning
 19 the Organization of the Ministries,^a and a vice-minis-
 20 ter acted in an assisting and advisory capacity to the
 21 minister who was the head of each administrative unit;
 22 that is, a ministry.^b

24 KIM-3. h. Tr. 31,674

KIM-4. a. Ex. 3348; tr. 31,658

25 KIM-5. a. Ex. 73; tr. 17,484

b. Tr. 31,671; tr. 31,803

1 KIM-6. There was no ordinance authorizing
2 the vice-minister to act in an assisting and advisory
3 capacity to the minister when the latter acted as a
4 state minister (which was a post held concurrently by
5 a minister who was the head of an administrative unit).^a

6 KIM-7. Imperial Ordinance on the Organiza-
7 tion of the Cabinet^a sets out the procedure used to
8 appoint a vice-minister a minister of state. When a
9 vice-minister was to be directed to act in the role of
10 a minister, such a special procedure was followed.
11 A minister was not allowed to so designate his vice-
12 minister on his own authority.^b

13 KIM-8. Next we will discuss the responsibili-
14 ty of the Vice-Minister of War in performing the mili-
15 tary administration as defined in the ordinances.
16 According to the universally accepted Japanese legal
17 interpretation of the Imperial ordinances, no one but
18 the minister who was the head of the respective admin-
19 istrative unit could represent each ministry, and Article
20 2 of the General Rules^a sets out that the minister of
21 each ministry was responsible for the matters assigned
22 to the ministry. The authority to issue orders, the
23 authority on personnel matters, and the authority to
24

25 KIM-6. a. Tr. 31,671; tr. 31,803

KIM-7. a. Ex. 70; tr. 17,480; tr. 31,671; tr. 31,803

b. Tr. 31,671; tr. 31,803

KIM-8. a. Ex. 73; tr. 17,484

1 punish rested on the Minister of War and not on the
 2 Vice-Minister.^b

3 KIM-9. The vice-minister, being an assistant
 4 and adviser, was not responsible in any sense for his
 5 acts to any one but the minister;^a that is, in case
 6 the vice-minister and his subordinates submitted their
 7 opinions which were eventually adopted, such decisions
 8 by the minister were made solely on his own responsi-
 9 bility and authority.

10 KIM-10. Article 16 of the General Rules^a states
 11 that the vice-minister is to assist the minister in
 12 adjusting the activities of the ministry and in super-
 13 vising its work. Therefore the vice-minister had no
 14 authority to control the business matters of the War,
 15 Ministry.^b

16 KIM-11. Also, the following limitation
 17 should be noted; that is, the vice-minister had no
 18 authority to command or issue orders, no authority to
 19 dismiss and no authority to punish as far as the bureau
 20 chiefs were concerned.^a

21 KIM-12. Each bureau chief was subordinated
 22 directly to the minister,^a

23 KIM-8. b. Tr. 14,405; tr. 31,802; tr. 31,717; ex. 74,
 24 Art. 1; tr. 17,487; ex. 3031; tr. 27,077; tr.
 31,718.

25 KIM-9. a. Tr. 31,802; tr. 31,718

KIM-10 a. Ex. 73; tr. 17,486

b. Tr. 31,763

KIM-11 a. Tr. 31,717; tr. 14,405; tr. 31,802

KIM-12 a. Tr. 31,716; tr. 31,672; tr. 14,406

1 and by order of the minister, managed those matters
 2 assigned to him, and directed as well as supervised
 3 the works of the sections and branches, and was held
 4 responsible directly to the minister. Bureau Chiefs had^b
 5 the authority to command, to control and to punish the
 6 members of their staffs and to keep examination records
 7 concerning them.^c

8 KIM-13. The relationship between the Minister,
 9 Vice-Minister, and Bureau Chiefs as depicted by a chart
 10 is shown in exhibit 3031.^a This chart tends to corrobo-
 11 rate other evidence that the Vice-Minister had no
 12 authority to command or give orders to the bureau and
 13 department chiefs and their subordinates of the War
 14 Ministry and that they were directly responsible to the
 15 War Minister.^b

16 KIM-14. Therefore, the Vice-Minister was the
 17 one who performed the surveillance of the work in
 18 the capacity of assisting and advising the minister
 19 in his role of management and surveillance and the
 20 Vice-Minister's part of surveillance did not imply
 21 compulsory measures but merely amounted to the authori-
 22 ty to guide or lead in performing the duties.^a

24 KIM-12. b. Ex. 73, Art. 18; tr. 31,804; tr. 31,672

c. Tr. 31,804

25 KIM-13. a. Tr. 27,077

b. Tr. 31,657; tr. 31,801; tr. 31,672; tr.
 31,716; tr. 14,406

KIM-14. a. Tr. 31,672; tr. 31,803; tr. 31,717

KIM-15. Also, it goes without saying that the
 1 minister had the authority to command and issue orders
 2 to chiefs of bureaus. It did not violate the regula-
 3 tions if the chiefs went directly to the minister,
 4 asking for his decision.^a

KIM-16. The authority and responsibility of
 6 the Vice-Minister as defined in War Ministry General
 7 Affairs Regulations;^a

8 Regulation (d) is based upon (b), ex. 73,
 9 and (c), exhibit 74, and defines the main points as to
 10 how the ministry's work was actually conducted, its
 11 chief object being the activities of the chief and
 12 their subordinates.

KIM-17. Hence, those articles regulating the
 14 activities of the chiefs and their subordinates used
 15 the term "the minister and the vice-minister", as these
 16 two were the only superiors. The said terminology
 17 seemingly conveyed the wrong impression that the two
 18 had more or less similar authority and responsibility
 19 in conducting the affairs. That, we submit, however,
 20 was not the case. The said terminology simply means
 21 that, as the vice-minister was an assistant and adviser
 22 to the minister, reports were submitted to and inter-
 23 changes of views were made with the vice-minister.
 24

25 KIM-15. a. Tr. 31,719; 31,720; ex. 3368, 3351, tr.
 14,397-8

KIM-16. a. Ex. 3348.

1 KIM-18. Article 27 of exhibit 3348^a shows
 2 that some affairs of the War Ministry were entrusted
 3 to the decision of the vice-minister, bureau chief,
 4 and the Senior Adjutant. Items 1 to 20 listed among
 5 the matters entrusted to the Vice-Minister in the
 6 Annexed List No. 1 of the Regulations Concerning the
 7 Treatment of Business of the War Ministry^b show the
 8 only items pertaining to personnel matters and mili-
 9 tary affairs which were entrusted to the Vice-Minister
 10 and, which, as can be seen, were unimportant.

11 KIM-19. The authority to decide on important
 12 matters rested solely in the minister, whatever case
 13 it might have been.^e Furthermore, so-called "entrusted
 14 matters" were delegated to the vice-minister and chiefs,
 15 etc., on the responsibility of the minister. And, as
 16 shown in Article 27 of exhibit 3348,^b while the chiefs
 17 were empowered to re-entrust immaterial matters within
 18 the purview of matters entrusted to them to the chiefs
 19 of the respective sections, the vice-minister was not
 20 empowered to re-entrust any matters to the chiefs.

21 KIM-20. Besides, as shown in the last para-
 22 graph of Article 27, the one who decided on the authori-

23 KIM-18. a. Tr. 31,661
 24 b. Ex. 3349; tr. 31,665
 25 KIM-19. a. Tr. 31,754, 31,808, 31,673
 b. Tr. 31,805; tr. 31,673; tr. 31,717; 31,754

1 ty thus entrusted was under obligation to report to
2 his superior in appropriate time those matters which
3 he deemed necessary.^a These entrusted matters were
4 those for which precedents were already established
5 and in which very little discretion was admissible
6 and the policy and the opinion of the minister left
7 little doubt.

8 KIM-21. In the ministry the relevant bureau
9 or section was assigned to prepare draft documents on
10 important matters and these drafts were initiated
11 either by the direct order of the minister or along the
12 line indicated by the minister beforehand.^a

13 KIM-22. Also, according to Article 18 of
14 exhibit 73 and Article 10 of "Regulation Pertaining
15 to Organizations and Functions of Departmental and
16 Sectional Activities of the War Ministry,"^a it was
17 explicitly stated that the chiefs of bureaus managed
18 the departmental affairs by order of the minister.
19 For such purpose, it was usually practised that the
20 minister from time to time indicated his policy and
21 opinion to his subordinates, thus laying down the yard-
22 stick for handling the affairs and he himself also

24 KIM-20. a. Tr. 31,661, 31,708
25 KIM-21. a. Ex. 3348, Art. 30; tr. 31,754
KIM-22. a. Ex. 3348; tr. 31,659

1 gave orders on important matters and had the work exe-
2 cuted by his subordinates. ^b

3 THE PRESIDENT: We will adjourn until half-
4 past one.

5 (Whereupon, at 1200, a recess was
6 taken.)

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25 b. Tr. 15907; Tr. 15,908; Tr. 31812; 31716.

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: With the Tribunal's permission
4 the accused TOGO will be absent from the court room
5 the entire afternoon session, conferring with his
6 counsel.

7 The accused MATSUI has been returned to
8 Sugamo Prison owing to illness.

9 Mr. Howard:

10 MR. HOWARD: Mr. President, I continue reading
11 from page 12.

12 KIM-23. Article 30 of Ex. 3348 refers to
13 the cases in which the opinions of the superiors
14 were not clear with regard to the important matters
15 on which drafts were initiated in the relevant section,
16 and its purpose was to prevent the subordinate sections
17 from deviating from the will of the minister. In the
18 case above stated, the vice-minister sometimes could
19 give his informal consent but he could do so only
20 when the will of the minister was definitely known to
21 him; he could never give his informal consent on his
22 own judgment.
23

24 KIM-24. Article 40 of Ex. 3348,^a is a
25 regulation referring to how the draft documents were

KIM-24. a. Fr. 31,662

1 signed for the final approval and how they were exe-
2 cuted.

3 Those which needed the decision of the
4 minister were to be forwarded to him through channels
5 and, upon his approval, were to be executed. Such
6 documents requiring the decision of the minister
7 were to be channeled through the vice-minister, but
8 as he had no authority to give the decision except
9 in case the matter was duly entrusted to him by
10 ordinance, the vice-minister had no authority to
11 decide on those documents to be forwarded to the
12 minister and the reason for having them channeled
13 through the vice-minister was to keep him informed
14 thereof so that he could assist and advise the
15 minister and to get his certification that the matter
16 met the desires of the minister as the vice-minister
17 understood them. As to these documents, the minister
18 was the sole authority to make any decision.

19
20 KIm-25. Article 41 of exhibit 3348 was a
21 special regulation with exceptional nature referring
22 to matters which needed urgent attention.

23 KIm-26. Article 46 of exhibit 3348 was a
24 special regulation referring to confidential matters
25 pertaining to personnel. These matters which fell
to the assignment of the bureau of personnel and

1 were also entrusted to the vice-minister, were un-
2 important as shown in Article 27, (item 7 to item
3 13 in the annexed list).^a

4 Actually the vice-minister adhered to this
5 regulation so that he was not taken in consultation
6 with regard to the important personnel affairs.^b

7 KIM-27. Article 47 of exhibit 3348 re-
8 ferred to press releases. Practically all of the
9 matters provided for in this article were trans-
10 ferred to the Information Department of the Imperial
11 Headquarters or the Cabinet Intelligence Bureau and
12 the Vice-War Minister had nothing to do with them.^a

13 KIM-28. Article 51 of exhibit 3348 referred
14 to cases where a matter once decided was to be sus-
15 pended before its execution. As stated in Article
16 30, the draftings of the important documents were
17 undertaken with the previous knowledge as to the
18 policy and opinion of the minister. Therefore, such
19 suspension of the execution was a rarity and when so
20 done was caused by extraordinary circumstances. Wit-
21 ness KAWAHARA explained in detail how matters were
22 decided and orders were issued from the War Ministry.^a

23
24 KIM-26. a. Ex. 3349, Tr. 31,666-7.
b. Tr. 31,806, Tr. 31,673, Tr. 31,799.
25 KIM-27. a. Tr. 33,108.
KIM-28. a. Tr. 31,754-58.

1 KIM-29. Joint responsibility for documents
2 drafted by the other ministries or the General
3 Staff Office was attributable to the minister con-
4 cerned and to no one else. That was because only
5 the minister could represent his ministry, its de-
6 cision was made by him on his own responsibility and
7 those under him fixed their seals on the documents as
8 an act of assisting the minister. ^a

9 KIMURA AS VICE WAR MINISTER GENERALLY.

10 KIM-30. Before discussing the actual
11 situation of Vice-Minister KIMURA during his tenure
12 of office, it is deemed necessary to clarify the
13 relations between TOJO and KIMURA and discuss KIMURA's
14 characteristics.

15 KIM-31. Before KIMURA was appointed Vice-
16 Minister, he had been the Director of the Ordnance
17 Bureau for about half a year in the same service
18 with General TOJO who was Vice-Minister of War at
19 that time. During this time, he was related with
20 TOJO only in his duties concerning ordnance and
21 engineering. With this exception he had never been
22 in the same government school nor unit since he be-
23 gan to serve in the Army. He has never had any
24 political, ideological or personal relations with
25

KIM-29. a. Tr. 31,761

^a
General TOJO.

1 KIM-32. The reason for KIMURA's appointment
2 to the post of Vice-Minister of War was to have him
3 assist the Minister in professional technical admin-
4 istration of ordnance and harmonize all the Ministry
5 by his sound character. His appointment has no
6 personal, special implication in connection with
7 TOJO.
8 ^a

9 KIM-33. Moreover, KIMURA hails from
10 Saitama Prefecture, which has produced few promin-
11 ent soldiers or seniors so he had nothing to do
12 with military groups or cliques. Before holding the
13 post of Vice-Minister, he led a military life, being
14 engaged purely in artillery training, technical ad-
15 ministration of ordnance and commanding troops. He
16 was not interested in politics, economy, or diplom-
17 acy, but was well versed in administration of ord-
18 nance on land.
19 ^a This is clearly indicated by the
20 fact that after his resignation from the post of
21 Vice-Minister in March 1943, he occupied the post
22 of Director of Ordnance Administration Headquarters
23 for one year and a half.

24 KIM-31. a. Tr. 31,810-11; Ex. 113, Tr. 727

KIM-32. a. Tr. 14,398; Tr. 31,811

25 KIM-33. a. Tr. 31,811

b. Tr. 31,812 ^b

1 KIM-34. There was no connection at all
 2 between a cabinet change and the appointment of
 3 the Vice-War Minister which was an internal affair
 4 belonging to the army. KIMURA's remaining in office
 5 as the Vice-Minister of the War Ministry of the
 6 TOJO Cabinet when the KONOYE Cabinet resigned was
 7 carried out only in accordance with precedent and
 8 did not signify anything in particular.^a

9 KIM-35. Minister TOJO was skillful and
 10 positive.^a He was well versed in military adminis-
 11 tration and a very hard worker, endowed with special
 12 executive ability. His most observed mottoes were
 13 "command at the head of the column" and "simplifica-
 14 tion and despatch of business." He personally con-
 15 trolled and commanded the important bureau and de-
 16 partment chiefs,^b directly commanded with quick de-
 17 cision,^c and transacted all the routine work of the
 18 Ministry with alacrity.^d

19 KIM-36. Even after Minister of War TOJO
 20 became Prime Minister, he all the more persisted in
 21 his way of direct leadership; he never left important
 22

23 KIM-34. a. Tr. 31,806; Tr. 31,674

24 KIM-35. a. Tr. 31,752
 b. Tr. 31,812; Tr. 15,907

c. Tr. 31,716

25 d. Tr. 31,812

1 business to others, but managed it with unusual
2 exertions and decision.^a Vice-Minister KIMURA's
3 scope of authorities and duties was exactly the same
4 as when General TOJO was War Minister only.^b

5 KIM-37. When KIMURA became Vice-Minister,
6 most all of the bureau and department chiefs were
7 of long standing in their post, and skillful experts.
8 They transacted business promptly and properly in
9 accordance with the Minister's intentions.^a

10 KIM-38. Accordingly, under the above-men-
11 tioned circumstances, KIMURA could not play his part
12 positively. Naturally, his efforts were chiefly
13 directed towards ordnance administration which was
14 his strong point. At the same time he tried to har-
15 monize the routine work of the office with a view to
16 enabling the skilled Minister, Bureau and Department
17 Chiefs display their abilities to the fullest extent.
18 This he accomplished.^a

19 KIM-39. Moreover, Minister TOJO was really
20 much occupied with many kinds of miscellaneous mat-
21 ters besides important administration. In order to
22 let TOJO devote himself to more important business,
23 the Vice Minister attended to ceremonial and
24

25 KIM-36. a. Tr. 31,814 KIM-37. a. Tr. 31,812; 31,716
b. Tr. 31,753; Tr. 31,814; Tr. 36,497; 15,946
KIM-38. a. Tr. 31,811-12; 31,752; 31,716.

miscellaneous items. He, too, was kept busy.^a

1 KIM-40. The Bureau Chiefs Meetings were
2 enforced with the objective of promoting friendly
3 liaison between the Minister, the Vice-Minister and
4 Bureau and Department Chiefs. They were not decision-
5 making bodies. The Minister sponsored them in name
6 and in fact. He directed them, paying attention
7 even to details.^a In the absence of the Minister,
8 which was rare, the Vice-Minister presided over them
9 but it was very seldom that this happened.^b KIMURA
10 scarcely made any utterances at the Bureau Chiefs
11 Meetings; he did not take an active part in them.^c

13 KIM-41. KIMURA was neither appointed as a
14 Minister of State nor to act officially for the
15 Minister.^a After TOJO became concurrently War Min-
16 ister and Prime Minister, there were no changes in
17 the status of KIMURA.^b The Minister was seldom away
18 from his office on official tours or other accounts.
19 The duration of his tours were short. Even during
20 his short absences the Vice-Minister never acted
21 officially in the name of the Minister.^c

22 KIM-39. a. Tr. 31,813; Tr. 31,752

23 KIM-40. a. Tr. 31,753; 31,815; 31,717. (b.) Tr. 31,815

24 c. Tr. 31,717; 31,815-6; 14,385

24 KIM-41. a. Tr. 15,946; 31,806; 31,814;

25 b. Tr. 36,497; 14,387; 15,496;

25 c. Tr. 31,814; 31,753; 15,496.

1 KIM-42. Requests made by the Chief of the
2 General Staff were first received by the military
3 Affairs Bureau and transmitted to the proper bureau
4 for consideration, and afterwards reply was made by
5 order of the War Minister.^a

6 KIM-24A. Vice-Minister KIMURA, like the
7 vice-ministers of the other departments, was appointed
8 a committee member or a councillor on various com-
9 mittees. But many committees of this kind were often
10 set up in every department as customary routine and
11 the majority of them were only nominal. KIMURA was
12 absent from most of the committee meetings. Although
13 he was present on rare occasions, it was really for
14 the sake of formality.^a

15 KIM-43. KIMURA did not attend even once
16 either of the liaison conferences or the Imperial
17 Conferences, neither did he take part in them in
18 any way.^a He did not attend conferences of the
19 Imperial Headquarters, of the section chiefs or of
20 the Commissariats which were held at the General
21 Staff Office.^b KIMURA had no connection in the
22 least with the plans of operation and their enforce-

24 KIM-42. a. Tr. 32,951

KIM-42A. a. Tr. 31,817; 31,675

25 KIM-43. a. Tr. 31,753; 14,404; 36,493

b. Tr. 31,753; 36,386-8; 33,415

ment.^c

1 KIM-44. The business liaison with the other
 2 ministries and the General Staff Office was chiefly
 3 conducted by the Military Affairs Bureau.^a Negotia-
 4 tions with the Foreign Office were handled by the
 5 Military Affairs Bureau.^b The matters under the
 6 jurisdiction of the Prisoners' Control Bureau were
 7 decided mostly by the chief of that bureau.^c

9 KIM-45. Investigation of the state of war
 10 prisoners and the matter of correspondence were
 11 supervised chiefly by the Prisoners' of War Infor-
 12 mation Bureau which was an organ under the direct
 13 control of the War Minister.^a The bureau had a
 14 character of independence and was an outside office
 15 of the War Ministry. The chief of the bureau was
 16 under the direct command and control of the Minister
 17 and took charge of the affairs of the bureau. It
 18 was usual that all documents or correspondence going
 19 out from and coming into the bureau were handled
 20 without passing through the adjutant section of the
 21 War Ministry.^d

23 KIM-43. c. Tr. 31,806; 33,106
 24 KIM-44. a. Tr. 32,953; 14,407
 b. Tr. 32,952; 14,407; 14,397
 c. Tr. 31,805; 31,758
 25 KIM-45. a. Tr. 14,440; 14,442
 b. Tr. 14,346; 14,442; 31,759
 c. Tr. 14,442 d. Tr. 31,759

1 KIM-46. The relations between the Vice-War
 2 Minister and foreign officers consisted only of ex-
 3 changes of formal salutations and there was no
 4 negotiation of any official affairs between them. ^a

5 KIM-47. The Kenpei was a special military
 6 unit under the direct control of the War Minister
 7 which was created by the Kenpei Ordinance. ^a The
 8 Vice-Minister had no control over it.

9 KIM-48. The members of "The Information
 10 Bureau of the War Office" were under the command and
 11 supervision of the Chief of the Military Affairs
 12 Bureau, under the jurisdiction of the War Minister. ^a

13 KIM-49. The above stated facts show that the
 14 leading power of KIMURA in the War Ministry was not
 15 increased in a marked degree compared with that of
 16 the Vice-Ministers of any other ministry. The actual
 17 circumstances at that time should be clear, if witness
 18 TANAKA, Ryukichi's statement, that Vice-Minister
 19 KIMURA was merely a robot and also his testimony
 20 relating to others in the War Ministry, be taken into
 21 consideration. ^a

22
 23 KIM-50. We submit that KIMURA while Vice-
 24 War Minister was in an analagous position to a

25 KIM-46. a. Tr. 31,759; 31,656; 31,818

KIM-47. a. Tr. 31,669; 31,316

KIM-48. a. Tr. 34,440 KIM-49. a. Tr. 14,397

1 member of the Reich Cabinet, which Cabinet was dis-
2 missed at Nuernberg as being "merely an aggregation
3 of administrative officers subject to the absolute
4 control of Hitler."^a

5 KIM-51. Although KIMURA is charged with
6 instigating aggressive war, the only statement
7 attributed to him by the prosecution is, "General
8 KIMURA, Vice-Minister of War, was not an advocate
9 of war with the United States, and told me not on
10 one occasion alone that if Ambassador KURUSU went
11 to the United States a settlement could be reached
12 between the two countries,"^a There is nothing in
13 the record other than this that shows that KIMURA
14 was for war or against war with any country at any
15 time. In fact, there is a dearth of evidence of
16 statements by KIMURA of any kind in the record.

17 BURMA-SIAM RAILWAY.

18 KIM-52. The next time that KIMURA is
19 mentioned in the record is in an opening statement
20 by the prosecution in which KIMURA is charged with
21 being responsible for the Burma-Siam Railway atroci-
22 ties as reported in exhibit 475.^a This prosecution
23

24 KIM-50. a. Nuernberg Judgment, Page 16,963

25 KIM-51. a. Tr. 2051

KIM-52. a. Tr. 5,513

exhibit states in conclusion that "the responsibility
1 ought to be placed on the then Chief of General
2 Staff, General SUGIYAMA, who ordered the construction;
3 the War Minister TOJO, who sanctioned the employment
4 of prisoners; and the Commander in Chief of the South
5 Area Corps, General TERAUCHI, who was entrusted with
6 the construction on the spot."^b
7

8 KIM-53. TOJO testified, "Consequently, the
9 treatment of the war prisoners employed in the con-
10 struction of the Burma-Siam Railway falls within
11 the jurisdiction of the War Minister. With respect
12 to the second category, I assume administrative
13 responsibility as Minister of War for the period
14 from the beginning of the Pacific War up to July 1944."^a
15

16 KIM-54. Prosecution witness TANAKA, Ryukichi
17 testified that, "Inasmuch as the decisions to use
18 prisoners of war in the construction of Siam-Burma
19 Railway was made by the General Staff, I think it was
20 highly improbable that the Vice-Minister KIMURA had
21 any voice in the matter."^a

22 KIM-52. b. Tr. 5,607-8
23 KIM-53. a. Tr. 36,413; See also TOJO's Affidavit,
24 Tr. 36,421; concerning construction of the
25 railway.
26 KIM-54. a. Tr. 14,405

KIL-55. Prosecution witness WAKAMATSU,
1 Tadakatsu, testified that, "The decision to use POW
2 labor on this railway was made by the Chief of Staff
3 SUGIYAMA, Minister of War TOJO, and the Vice-Minister
4 of War KIMURA. The last name through his official
5 position, though not basically responsible."^a (Later
6 in this summation we shall quote from pages 75 and 76
7 of "Prisoners of War," by W.E.S. Florey, American
8 Council of Public Affairs, 1942, concerning the legal-
9 ity of the use of POW in the construction of railways.)
10 TANAKA, Tadakatsu testified that the employment of
11 POW's in the construction work of the Burma-Siam
12 Railway was decided through direct negotiations be-
13 tween the Chief of the General Staff and the Minister
14 of War. The construction order was drafted and issued
15 by the General Staff Office.^b

17 IMPERIAL GENERAL HEADQUARTERS.

18 KIM-56. It was said in the opening state-
19 ment previously mentioned that KIMURA was a member
20 of Imperial General Headquarters. KAWAHARA testified
21 that KIMURA was not present at the Information Con-
22 ference of Imperial Headquarters nor Information
23 Conferences of Chiefs of Departments, nor the Commis-
24

25 KIL-55. a. Tr. 14,634
b. Tr. 31,816

sary Information Conferences held at the General
Staff Office.^a

KIM-57. Prosecution witness TANAKA, Ryukichi testified that, "As an attendant to the War Minister, the Vice-Minister had authority to attend meetings of the Imperial Headquarters. However, he had no authority whatever to take part in forming important decisions."^a OIKAWA explained the position of the Navy Vice-Minister at Imperial Headquarters.^b

KIM-58. TOJO explained that the War Minister could attend the Imperial Headquarters conferences as a participant. He further testified that not on a single occasion did he attend such a conference.^a I need not point out that if TOJO did not go his attendant could not go.

PLANNING BOARD

KIM-59. In an opening statement it was stated that KIMURA was Vice-Minister of War and Councillor of the Planning Board at the time of the renewal of the Anti-Comintern Pact.^a This was a matter of national policy which was in the province

KIM-56. a. Tr. 31,753
KIM-57. a. Tr. 14,404
 b. Tr. 33,341
KIM-58. a. Tr. 36,386-7
KIM-59. a. Tr. 6,048

1 of the diplomats and KIMURA had no connection with
2 it whatever. Furthermore, no evidence has been pro-
3 duced that KIMURA ever attended a meeting or ever
4 took any part whatsoever in anything relative to
5 the Anti-Comintern Pact. KIMURA's position as a
6 councillor on the Planning Board was explained in
7 paragraph 42A of this summation. There is no evi-
8 dence that KIMURA did anything as such councillor.

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TOTAL WAR RESEARCH INSTITUTE

1 YIM-60. The affidavit of SAWAMOTO states that:
2 "SAWAMOTO was councillor of the Total War Research Insti-
3 tute as were the Vice Minister of other ministries but
4 the only chance he had to take part in proceedings of
5 the institute as I remember it now was to attend once
6 a year, together with colleagues from other ministries,
7 for the purpose of hearing the report of the result of
8 the studies."^a
9

10 KIM-61. Prosecution witness HORIBA, who was an
11 officer of the Institute, testified that he did not
12 ever meet or talk with General KIMURA. He further stated
13 that the position of councillor was a nominal post,
14 without any particular substance.^a
15

16 KIM-62. There is no evidence that KIMURA ever
17 attended one of the meetings or ever knew what went on
18 in the meetings. It will be noted also that General
19 KIMURA was not a councillor of the Total War Institute
20 after March 1943 and hence had no connection with it
21 during the time that MURAKAMI testified about in his
22 affidavit.^a

23 KIM-60. a. Tr. 31,675

24 KIM-61. a. Tr. 8,862

25 KIM-62. a. Ex. 3372; Ex. 113

1 KII-63. I should also like to point out that
2 IIMURA, who was also director of the Total War Research
3 Institute from January 1941 to October 1941, testified
4 that he received no direction from General KIMURA in
5 connection with business of the Institute.^a

6 SOUTHERN MILITARY OPERATIONS.

7 KII-64. Reference is made to KIMURA in connec-
8 tion with Communication 9 concerning issuance of military
9 currency.^a So far as KIMURA is concerned, this only
10 shows that communications were received from the Chief
11 of the Finance Bureau by various ministries, including
12 the War Ministry, which, considering the possibility
13 of carrying out a military operation, it was deemed
14 necessary to issue military currency notes in foreign
15 denominations for the purpose of helping to defray
16 the war expenditures of the forces. The mode of
17 procedure was to be determined at a conference of
18 the Minister of Finance, War Minister and Navy Minister.
19 The negotiations that were carried on in January or
20 thereabouts were made before KIMURA's assumption of
21 the post of Vice Minister and those in July or there-
22 abouts were done as an entrusted matter of the Chief

23
24 KII-63. a. Tr. 27,071; see also TANAYA, Tadakatsu's
25 affidavit, Tr. 31,817.

KII-64. a. Tr. 8,456

1 of the Finance Bureau with which KIMURA was not concern-
2 ed. There is no evidence that KIMURA participated in
3 the formulation of an aggressive policy directed
4 against the southern regions.

5 KIM-65. SHIBAYAMA testified that the officers
6 of the War Ministry never planned or carried out
7 operations.^a

8 KIM-66. Witness YOSHIDA explained about the
9 military currency in his affidavit.^a

10 KIM-67. There was placed in evidence a telegram
11 dated November 22, 1941, from TSUKADA, General Chief
12 of Staff of the Southern Army, to KIMURA, Vice-Minister
13 of War, which shows that the headquarters of the south-
14 ern army were moved from Tokyo on 25 November 1941 to
15 Formosa.^a This was apparently for the information of
16 the War Ministry and there is nothing to show that
17 KIMURA took any part in planning this movement or that
18 he had anything to do whatsoever concerning this matter.
19 There has been ample evidence that the Vice Minister of
20 War was not concerned with matters of command. We should
21 also like to call your attention to the fact that
22 KIMURA's chop or seal does not appear on this document

24 KIM-65. a. Tr. 31,806

25 KIM-66. a. Tr. 26,972 (see also Ex.3026, T.26,980)

KIM-67. a. Ex. 875; T. 8,984

1 KIM-70. The evidence shows that KIMURA was
2 born in Saitama Prefecture and not in Tokyo Prefecture
3 as stated in the telegram. It shows that he held the
4 position of Chief of General Staff of the Kwantung
5 Army from 22 October 1940 to April 1941, and not as
6 stated in the telegram.^a The statement that "he
7 especially worked in behalf of Germany", is explained
8 by the man who recommended him for the decoration in
9 the first place, namely General Kretschmer, in his
10 affidavits in which he states that the Kwantung Army
11 helped in getting shipments of tungsten, rubber and
12 soy beans to Germany via Manchuria. He did not
13 remember whether KIMURA did anything of the kind
14 while he was Chief of Staff in the Kwantung Army or
15 not.^b Kretschmer also testified that in order to
16 overcome the German Foreign Office's reluctance he
17 regarded the superlative to be necessary where the
18 positive would have been more correct and more
19 corresponding to the reality. And the Ambassador
20 added superlatives in his additional explanations.^c

21
22 TANAKA, Tadakatsu, testified that KIMURA
23 did not support the German-Japanese Military Alliance.^d

24 KIM-70. a. Ex. 113; Ex. 3347; T. 31,657
25 b. T. 31,656
c. T. 27,095
d. T. 31,818

1 Kretschmer said that he observed nothing
2 that indicated that Ott was truthful when he said
3 that KIMURA's position had been enhanced when TOJO
4 became Prime Minister.^e

5 KIM-70-A. There is evidence that the 32nd
6 Division that KIMURA was commander of at one time
7 was stationed at Yenchou, China.^a We do not deny
8 that KIMURA was one of the thousands of soldiers
9 stationed in China at one time.

10 POW PUNISHMENT ACT

11 KIM-71. In an opening statement it was
12 stated that KIMURA was responsible for the design
13 of the POW Punishment Act, the provisions of which
14 were in direct contravention of the laws of war and
15 the provisions of the Geneva POW Convention of 1929.^a

16 KIM-72. You will recall that Judge Advocate
17 General OYAMA testified in his affidavit that the
18 Legal Section of the War Ministry was consulted by
19 members of the War Ministry concerning the legality
20 of the above-mentioned act and they were advised that
21 it was legal.^a He further testified that General
22 KIMURA himself did not consult the Legal Affairs Section
23

24
25 KIM-70. e. T. 31,657
KIM-70-A. a. T. 16,258
KIM-71. a. T. 12,872
KIM-72. a. T. 16,258

1 about this matter,^b and that the Vice Minister did not
2 have any connection in facilitating the matter. He
3 also testified that the purpose in revising the law
4 was to make it conform to the ordinary criminal code
5 of Japan which had been revised in 1908.^c

6 General OYAMA also said that further con-
7 sultation was made with the Legislative Bureau con-
8 cerning the legality of the Prisoner of War Punish-
9 ment Act.^d

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24 KIP-72. b. T. 31,697
25 c. T. 31,693
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1 KIM-73. TANAKA, Tadakatsu, testified that
2 General KIMURA actually knew nothing about this act
3 until a very few days before it was explained to
4 the Diet Committee^a by him and that KIMURA took no
5 part in the drafting of the act.^b

6 KIM-74. Concerning the enactment and amend-
7 ment of laws, TANAKA, Ryukichi, testified that the
8 various heads of the sections would get in touch
9 with the various bureau heads and the heads of the
10 ministries in the Cabinet, then the matter would be
11 taken up in a Cabinet meeting and the Vice-Minister,
12 although he had authority to make suggestions, was
13 not in a position to make decisions.^a

14 KIM-75. TOJO testified that the act was based
15 on the idea of applying with modifications the Geneva
16 Protocol, and was drafted with the conviction that
17 it was not in conflict with the Protocol.^a He also
18 testified that he was politically responsible for
19 matters relating to the promulgation of the POW Punish-
20 ment Act.^b

21 KIM-76. The negotiations and liaison between
22 the War Ministry and the Imperial Diet were in charge
23

24 (KIM-73. a. Tr. 31,817
b. Tr. 31,817
25 KIM-74. a. Tr. 14,397
KIM-75. a. Tr. 36,418
b. Tr. 36,414)

1 of the Military Affairs Bureau.^a There were no
2 regulations authorizing the Vice-Minister to engage
3 in political affairs or to negotiate with the Diet.
4 The members of the Government Committee were appointed
5 by the cabinet from among the Vice-Ministers and
6 Bureau Chiefs concerned and their functions were con-
7 fined to making explanations before the Diet. And
8 they were not in a position responsible to the Diet.
9 Accordingly, the duties of the members of the Govern-
10 ment Committee in the Diet were quite different from
11 those of the Parliamentary Vice-Minister or Parliamen-
12 tary Counsellor from the War Ministry. Even during
13 the time when the Parliamentary Vice-Minister and the
14 Parliamentary Counsellor existed, the members of the
15 Government Committee in the Diet were appointed
16 separately in order to make their explanation in the
17 Diet concerning the particular business being con-
18 sidered.^b

19 CORRECTION OF DATES

20 KIM-77. In another opening statement, it
21 was stated in error that KIMURA was Vice-Minister of
22 War 1941-1944.^a The evidence shows that KIMURA was
23 "relieved of present post at his own request" on
24 (KIM-76. a. Lx. 74, Art. 12, par. 7
25 b. Tr. 31,764
KIM-77. a. Tr. 14,263)

11 March 1943.^b He was Vice-Minister for only 15
1 months of the Pacific War. In this same opening
2 statement it was said in error that KIMURA was
3 Commander-in-Chief of the Japanese army in Burma from
4 April 1944 to August 1945. The evidence shows that
5 KIMURA arrived in Burma in the middle of September
6 1944.^c

7
8 PROTESTS CONCERNING POW'S

9 KIM-78. The next bit of evidence concerning
10 KIMURA is the communication which was transmitted
11 to the Allied governments concerning the observation
12 of the Geneva Convention mutatis mutandis and con-
13 cerning the giving due consideration to the racial
14 habits and customs of interned prisoners in regard
15 to food and clothing.^a The prosecution stated that
16 KIMURA had promised certain things to the Allied
17 governments but actually KIMURA had merely answered
18 the Foreign Office in the form of official corres-
19 pondence; stating the view of the War Ministry, that
20 view having been approved by the Minister. Whereupon,
21 the Foreign Minister sent the notifications to the
22 governments of the Allied Powers. Therefore, it was
23 not KIMURA who made promises.

24 (KIM-77. b. Ex. 113, Tr. 731
25 c. Tr. 31,729
KIM-78. c. Ex. 1958, Tr. 14,299)

1 KIM-79. KIMURA is also referred to by
2 prosecution witness TANAKA as being present at a
3 meeting of bureau chiefs at which the treatment of
4 POW's was being discussed.^a There is nothing in
5 the record to show that anything was said at the
6 meeting by KIMURA or that he concurred in TOJO's al-
7 leged decision to have officer POW's work. On the
8 contrary, there is evidence that he rarely spoke.^b
9 See also TOJO's affidavit and YAMAZAKI's affidavit
10 concerning this matter. TANAKA further testified that
11 the Vice-War Minister did not have executive authority
12 to carry out the business routine within the War
13 Ministry except on matters delegated to him pertain-
14 ing to the Ministry. He said further that if the
15 bureau chiefs and section chiefs did not obey his
16 orders, the Vice-War Minister had no power to punish
17 or force them to obey orders.^c Other witnesses have
18 testified to the same effect.^d

19 FORCING OFFICER POW'S TO WORK

20 KIM-79-A. There is in evidence an exhibit
21 from TOJO's instructions to the Commander of the
22 Zentsuji Division in which he stated that the situation

23 (KIM-79. a. Tr. 14,289; Cf 31815
24 b. Tr. 31,717
25 c. Tr. 15,947-8
d. Tr. 31,803)

1 of affairs did not permit anyone to lie idle doing
2 nothing but eating freely.^a The prosecution in their
3 reply to our motion to dismiss stated that KIMURA
4 must share responsibility for this statement. How-
5 ever, they produce no evidence that KIMURA concurred
6 in, authorized, enforced or had anything to do what-
7 soever in connection therewith. On the other hand,
8 TANAKA, Tadakatsu, testified that KIMURA was not
9 present when the instruction was delivered and had
10 no part in drafting of the same.^b TOJO stated that
11 regulations and orders with respect to POW's were
12 either made or approved by the War Minister.^c

13 KIM-80. I wish to draw the attention of the
14 Tribunal to the testimony of witness YAMAZAKI, who
15 attended the conference where said instructions were
16 read. He stated that the instructions of the War
17 Ministry,^a were planned on the initiative of Lieutenant
18 General UEMURA who was at that time Director of the
19 Bureau of Control of Prisoners of War and that the
20 instructions were drafted by UEMURA; that UEMURA
21 read the instructions for the Minister and that the
22 Vice-Minister did not attend the conference.^b TANAKA,
23

24 (KIM-79A. a. Tr. 14,424
b. Tr. 31,817-8
c. Tr. 14,593
25 KIM-80. a. Ex. 1962-1963
b. Ex. 3049; Tr. 27,231)

1 Tadakatsu, testified that KIMURA never attended the
2 meetings of the Commanders of the POW camps in the War
3 Ministry.^c

4 POW'S IN MUNITIONS INDUSTRIES

5 KIM-81 The prosecution put in evidence an
6 application from the Eastern District Army to TOJO,
7 Minister of War, requesting that he sanction the
8 use of POW's for certain undermentioned work.^a TOJO
9 when interrogated by the prosecution stated that he
10 permitted POW's to be worked in factories by
11 KAMAMURA (Tr. 14,595). There followed a list of eight
12 different working places. The eighth working place
13 being in the English text: "Munition's factories for
14 expanding production." The application appears to
15 have been approved by the Vice-War Minister. Witness
16 KAWAHARA explained that this was a matter that had
17 been delegated to the Vice-Minister by the War Minister
18 and the approval was based on the intention of the
19 War Minister as understood by the Vice-Minister and
20 did not represent the intentions of the Vice-Minister
21 himself.^b

22 KIM-82. The prosecution made particular
23 (KIM-80. c. Tr. 31,817
24 KIM-81. a. Ex. 1967, Tr. 14,440
25 b. Tr. 31,783)

reference to the eighth working place only. ^a No doubt
1 because the English text refers to "Munitions factories."
2 The Japanese word used in the application for "munition³"
3 is "gunju". This is a narrow translation of the word.
4 The original meaning of the word was "military demand":
5 "gun" meaning "military" and "ju" meaning "demand".
6 It also means "war materials", "war supplies", and
7 "requisites for war".
8

9 KIM-83. To show that the term "munitions
10 industries" was a general term, I quote from a pros-
11 ecution exhibit, ^a "Outline of the Five Year Plan
12 for Production: 3. The term 'munition industries'
13 in this outline refers not only to industries engaged
14 in the manufacture or repair of finished goods or parts
15 for war purposes, but applies also to vital raw mater-
16 ials industries."

17 It is our submission that if the applicant
18 had been making application of POW's to work in the
19 production of "arms" and "munitions" he would have
20 used the words "heki" and "danyaku".
21

22 KIM-84. You will recall that Article 31,
23 Chapter 3 of Geneva Convention states: "Labor furnished
24 b, prisoners of war shall have no direct relation with

25 (KIM-82. a. Tr. 31,780.
KIM-83. a. Ex. 841, Tr. 8,261-2)

1 war operations. It is especially prohibited to use
2 prisoners for manufacturing and transporting arms or
3 munitions of any kind, or for transporting material
4 intended for combatant units." The official Japanese
5 translation of the above quoted article uses the words
6 "heiki" and "danyaku" for "arms" and "munitions".

7 KIM-85. Florey says ---

8 THE PRESIDENT: Is that in evidence? Is
9 Florey's statement in evidence?

10 MR. HOWARD: It is not, your Honor.

11 THE PRESIDENT: Well, omit it.

12 MR. HOWARD: That puts us over then to page 47,
13 paragraph 87.

14 KIM-87. The prosecution has not produced any
15 direct evidence of POW's having been used in work in
16 munitions factories. Surely they could have produced
17 one former POW witness to testify to his having so
18 worked if it were true. On the other hand, witness
19 HIGASA, who had charge of POW matters in the Eastern
20 Army of Japan which made the above-mentioned applica-
21 tion, swore that the application did not contain any
22 plan of employing POW's in labor directly connected
23 with military operations such as production and trans-
24 portation of arms and ammunition. He further swore
25 that at no time were POW's employed in such kind of

1 labor mentioned above.^a It is our submission that the
2 loose translation of the word "gunju" had caused a
3 misunderstanding by the prosecution.

4 KIM-88. The prosecution put in evidence an
5 "Inquiry Concerning the Question of Making Available
6 the Manchurian Machine Tool Company for a rapid
7 increase in Aircraft Production" from the Vice-War
8 Minister to the Chief of Staff of the Kwantung Army.^a
9 It is not clear as to what the prosecution intended
10 to prove by this document. Possibly that POW's were
11 to be used in the direct production of arms and mun-
12 itions. However, a close reading of the application
13 shows on its fact that they were to be used for the
14 production of machine tools which would in turn be used
15 in the production of aircraft.^b It should not be
16 necessary for us to point out that machine tools are
17 not arms or munitions. It would be as reasonable to
18 call the production of the grease^a to be used in the
19 aircraft factories as direct production of arms and
20 munitions.
21

22 KIM-89. Witness SEMBA testified that he
23 drafted the "Note of Utilizing the Manchurian Machine
24 (KIM-87. a. Tr. 31,713-14

25 KIM-88. a. Tr. 14,497
b. Tr. 14,499)

1 Tool Company for the Purpose of Urgent Aerial Main-
 2 tenance"^a with the intention of engaging the company
 3 in the speedy production of machine tools. That the
 4 prisoners participated in the production of bench
 5 lathes and automatic lathes of the German Index type.
 6 He further testified that they did not project and
 7 carry out the direct production of aircrafts. SEMBA
 8 also testified^b that the above-mentioned note was
 9 issued under the name of the Vice-Minister, as en-
 10 trusted according to the "Note Concerning the Disposal
 11 of POW's at the Present"^c decided by the War Minister
 12 on May 2, 1942.^d

13 KIM-90. Witness KUBOTA testified that he was
 14 President of the Manchurian Engineering Machinery
 15 Company, Ltd., when POW's were used there.^a He ex-
 16 plained in detail how they were used and treated. He
 17 also testified that his company never used POW's in
 18 work related to the manufacture of arms or with work
 19 directly concerned with the operations of war.

20 SHOWING OF POW'S

21 KIM-91. There is evidence that a report was
 22 sent to KIMURA describing the reactions among the
 23 general public following the internment of British
 24

25 (KIM-89. a. Tr. 31,702
 b. Tr. 31,700
 c. Ex. 1965-A, Tr. 14,475
 d. Ex. 3355, Tr. 31,700
 KIM-90. a. Tr. 27,887)

1 POW. Witness IHARA testified that he was Chief of
 2 Staff of the Japanese Army in Korea when the POW's
 3 in question were received there. He also testified
 4 that they tried to protect the dignity of the pris-
 5 oners. That such reports were customarily addressed
 6 to the Vice-War Minister from the Chief of Staff.
 7 KAWAHARA testified likewise.

8 KIM-92. Therefore, correspondence between
 9 the Chief of Staff of the Korean Army and the Vice-
 10 Minister was actually correspondence between the
 11 Korean Army Headquarters and the War Ministry. We
 12 wish also to call your attention to the fact that
 13 KIMURA's seal does not appear on this report. Further-
 14 more, the Japanese original shows that the application
 15 for POW for Korea was approved by the War Minister.
 16 Witness KAWAHARA further testifies to this fact.

17 KIM-93. Witness WAKAMATSU testified that he
 18 was a former Vice-War Minister and that the Vice-
 19 War Minister had no power of decision in POW matters.

20 DOOLITTLE FLIERS.

21 KIM-94. The prosecution has placed in evidence
 22 an order transmitted by KIMURA concerning the disposition

23 (KIM-91. a. Tr. 14,521 (KIM-92. a. Ex. 1973; Tr. 14,513
 24 b. Tr. 30,161 b. Tr. 31,779
 25 c. Tr. 30,162
 d. Tr. 31,757 (KIM-93. a. Tr. 14,655)

of enemy airmen. Certain corrections were made in
1 the translation by the Language Board. The order of
2 transmissal with the corrections reads as follows:

3 "Communication (Army Secret No. 2190)

4 "Despatched from: Vice War Minister KIMURA,
5 Heitaro

6 "To: Each Chief of Staff stationed in Japan
7 and Outside of Japan.

8 "Re: Treatment of Enemy Air Crew Members.

9 "Dated: 28 July 1942.

10 "By order you are notified to take note and
11 understand that the following decision was made in
12 regard to the treatment of enemy air crew members who
13 entered our jurisdiction with the object of raiding
14 Japanese territory, Manchukuo and our regions of oper-
15 ation.

16
17 "(1) Those who do not violate the war-time
18 international law shall have to be treated as POW's
19 and those who show actions of violating the said law
20 shall be treated as having committed major war crimes.

21 "(2) Defense Commander-in-Chief of various
22 places (including troops stationed in Japanese ter-
23 ritory outside Japan and the governor of occupied
24

25 (KIM-93. a. Tr. 14,655
KIM-94. a. Ex. 1992)

Hongkong) shall send for Court Martial such enemy
1 air crew members, who entered the respective juris-
2 dictions and are suspected of deserving treatment as
3 war-time capital criminals. (In regard to the above
4 courts-martial, the provisions of the Specially
5 Established Court Martial stated in the Army Court
6 Martial Law shall be applied)."

7
8 KIM-95. It is assumed that this is the com-
9 munication that the prosecution referred to when they
10 said that KIMURA personally issued the order for the
11 death penalty on captured air men since this is the
12 only order that is in evidence concerning the matter
13 which appears to have been signed by KIMURA. We submit
14 that this might more correctly be described as an
15 order to try by existing court-martial procedure those
16 captured air men who were suspected of violating inter-
17 national law.

18 KIM-96. We should like to call the Tribunal's
19 attention to the fact that the "Notification of Matters
20 Pertaining to the Treatment of Crew Members of Raiding
21 Enemy Planes",^a which sets out suggested Articles of
22 War to be made the military disciplinary law by the
23 China Expeditionary Force, was sent to the China Ex-
24 peditionary Force by Seimu TANABE, Deputy Chief of
25 (KIM-96. a. Ex. 1993, Tr. 14,670)

Staff by order of the Chief of the General Staff.

1 There is no evidence that KIMURA had anything to do
 2 with drafting or transmitting the suggested Articles
 3 of War. Therefore, we are not concerned with the
 4 question as to the legality or the Articles of War.
 5 We submit there is nothing contrary to international
 6 law in the order signed by KIMURA.
 7

8 KIM-97. Evidence was introduced to show that
 9 the procedure set out in Army Secret Order No. 2190^a
 10 was the same as that used in the trial of Japanese
 11 soldiers. Such evidence being excerpts from Japanese
 12 Military Court Martial Law^b and excerpts from the
 13 Military Criminal Code.^c

14 KIM-98. Prosecution witness TANAKA, Ryukichi,
 15 testified that the matter was decided in the Imperial
 16 Headquarters by the Chief of the Army General Staff.^a
 17 He further testified that the responsibility of the
 18 Vice-Minister in connection with the note relating to
 19 the treatment of POW's was merely to transmit the note.^b
 20

21 KIM-99. An excerpt from an interrogation of
 22 TOJO shows that TOJO stated that the Army Chief of
 23 Staff SUGIYAMA went directly to TOJO and demanded
 24 severe punishment for the fliers; that as a result

25 (KIM-97. a. Ex. 1992 (KIM-98. a. Tr. 14,387
 b. Ex. 3354, b. Tr. 14,385)
 Tr. 31,676
 c. Ex. 3353, Tr. 31684

of the request he issued an order for military admin-
1 istration, that he was not positive whether the order
2 was issued over his name or by Imperial Headquarters
3 but that no matter who issued it he was responsible
4 for it. ^a Witness TANAKA, Tadakatsu, testified that
5 the decision on the main points of this order was ap-
6 proved by the direct request of the Chief of the
7 General Staff. ^b The death penalty for the three fliers
8 was decided in a consultation between the Chief of the
9 General Staff, SUGIYAMA, and War Minister TOJO. ^c
10 KIMURA was not involved in the matter.
11

12 SUPREME WAR COUNCIL:

13 KIM-100. There is evidence that KIMURA
14 attended a meeting of the Army members of the Supreme
15 War Council. ^a There is no evidence that anything
16 occurred at this meeting other than an explanation
17 of the international situation. Witness SANADA testi-
18 fied concerning what took place there in his affidavit. ^b
19 There is no evidence that he attended any other meeting
20 of this body.

21 The Nuernberg decision, in referring to cer-
22 tain organizations and groups, says that membership

23 (KIM-99. a. Tr. 14,601-2

24 b. Tr. 31,816

c. Tr. 1450-2

25 (KIM-100. a. Tr. 16,179

b. Tr. 28,735)

alone is not enough.

1 KIM-101. This "Gunji Sangi Kan" meeting
2 should not be confused with "Saiko-Senso-Shido-Kaigi"
3 meetings. Both of these terms have been interpreted
4 as meaning "Supreme War Council." We submit that a
5 more precise interpretation of Gunji Sangi Kan would
6 be "Military Affairs Councillors Conference." The
7 Conference for the Supreme Direction of the War (Saiko-
8 Seno-Shido-Kaigi) was organized during the time of
9 the KOISO Cabinet.^a KIMURA was not a member of this
10 body.
11

12 KIMURA IN BURMA

13 KIM-102. Prosecution, in their answer to
14 our motion to dismiss, as to KIMURA, stated that
15 "from 30 August 1944 to the surrender he was commander
16 of the army in Burma. The outrages which took place
17 there during that period are described in Exhibits
18 1573-A, 1574-A, 1552-A, 1553-A, 1555-A, 1558-A. For
19 these we submit he is directly responsible."
20

21 KIM-103. Exhibit 1573 is a Synopsis of
22 Evidence Concerning Coolies on the Railway. Exhibit
23 1574, the Affidavit of Major Robert Crawford, is one
24 of the affidavits mentioned in Exhibit 1573 and tells
25 (KIM-100. c. Nurnberg Judgment, p. 16,930
KIM-101. a. Tr. 631)

1 of the mistreatment of coolies on the Burma-Siam Rail-
2 way, the last date mentioned being December 1943 which
3 was before the arrival of KIMURA in Burma.

4 KIM-104. The prosecution placed in evidence
5 many exhibits concerning alleged atrocities in Burma.
6 In order to show that many of these happened before
7 KIMURA arrived and for other reasons we shall mention
8 them all briefly.

9 Please remember that these are practically
10 all ex parte statements and that only two of the
11 affiants, who testified about the Burma-Siam Railway,
12 were available for cross-examination in this court.
13 Also we will cite evidence that there were other troops
14 in Burma besides KIMURA's command.

15 (a) Concerning the alleged facts stated in
16 thirteen exhibits, namely, No. 1535(A), 1548(A) to
17 1550(A), inclusive; 1554(A) to 1558(A) inclusive, and
18 1579 to 1582(A) ^a inclusive. All of the above exhibits
19 except 1557(A) and 1558(A) seem to be the ones bearing
20 on the alleged facts which occurred before General
21 KIMURA took the post of Commander of the Burma Area
22 Army on the 12th of September 1944. ^b The Tavoy Inter-
23 ment Camp which appears in Exhibits 1557(A) and 1558(A)
24 (KIM-104. a. Ex. 1535(A) to 1585(A) inclusive
25 Tr. 12,963 to 13,106
b. Tr. 27,575, 27,601, 27,537)

1 was under the direct control of the head of the 24th
2 Mixed Brigade belonging to the Burma Area Army.^c In
3 December 1944, two and one-half months after KIMURA
4 arrived in Burma, the Tavoy Internment Camp was trans-
5 ferred from the command of the Burma Area Army to the
6 Thai Area Army by order of the commander of the Southern
7 General Army. The Tavoy Internment Camp was put under
8 the direct control of the unit which was under control
9 of the Commander of the Thai Area Army and stationed
10 in Tavoy.^d

11 (b) Concerning the alleged facts which appear
12 in the twenty-one exhibits, namely, 1536, 1559 to
13 1578(A) inclusive, and the facts to which both wit-
14 nesses, Mr. John Williams and Major John Lloyd, testi-
15 fied on the 17th of December 1946.^e

17 It appears from these that the facts are
18 related to the alleged ill treatment by the Japanese
19 armies given to war prisoners, such as using them for
20 the construction of the Thai-Burma Railway. The con-
21 struction of the Thai-Burma Railway had been completed
22 already a year before General KIMURA arrived at his
23 post as the Commander of the Burma Area Army and more-
24 over the construction, operation or management of which

25 (KIM-104. c. Tr. 27,584
d. Tr. 27,584
e. Tr. 12,996 to 13,049)

1 was conducted by the commander of the Field Railway
2 Corps then under the direct control of the Commander
3 of Southern General Army.^f The Commander of the Burma
4 Area Army had nothing to do with the Burma-Siam Railway.

5 (c) Concerning the alleged facts which appear
6 in exhibits 1584 and 1585(A):

7 It appears from these that the alleged facts
8 are related to the alleged ill treatment by the Jap-
9 anese armies of the war prisoners, such as using them
10 for constructing the Mergui-Kirihkan Road from April
11 1945 to August of the same year. Since December 1944,
12 Mergui Area, not to mention Tavoy Area, entered under
13 the control of the commander of the Thai Area Army in
14 accordance with the order of the Commander of the Southern
15 General Army.^g Kirihkan is in Thailand. The command
16 of the Burma Area Army had nothing to do with the
17 Mergui-Kirihkan Road.

18 (d) Concerning the alleged facts which
19 appear in the fifteen exhibits, namely 1537(A) to
20 1547(A) inclusive; 1551(A) to 1553(A) inclusive; and
21 1563(A):

22 It appears from these that some of the facts
23 occurred during General KIMURA's tenure of office as
24 (KILI-104. f. Tr. 27,583-84; Tr. 27,538
25 g. Tr. 27,584)

1 the commander of the Burma Area Army. The authorities
2 of the Area Army headquarters knew nothing about the
3 alleged facts appearing in the said exhibits and never
4 issued any orders in connection therewith.^h

5 Since the alleged facts which appear in the
6 exhibits, namely, a part of 1539(A) and 1541(A),
7 1542(A), 1543(A), 1545(A), and 1546(A) are undated,
8 I shall mention them no further.

9 Ever since General KIMURA arrived at his
10 post as the commander of the Burma Area Army, the
11 Japanese army was continuously being defeated; thus
12 they were put in an awkward predicament. Nevertheless,
13 General KIMURA offered his serious efforts for the
14 maintenance of the military discipline and for the
15 grasping of the popular feeling throughout his tenure
16 of office. He also endeavored to drive home his
17 lesson by all means to his subordinate commanders who
18 also did their best to obey their commander. The
19 military discipline was strictly maintained and Japan
20 and Burma were friendly.ⁱ

22 KIM-105. IKEJIRI testified that the Rangoon
23 POW Camp was under the control of the Commander of
24 the Combined Southern Army and that the Chief of the
25 (KIM-104. h. Tr. 27,514; 27,583; 31,726;
31,730; 31,735; 31,744
i. Tr. 31,736-79; 31,731) .

1 Rangoon Camp was appointed and removable by the Chief
2 of the Malay POW Camp.^e On cross-examination he
3 testified that on all important matters the commandant
4 received orders from the POW Camp Commander at Malaya.^b
5 He further testified that the treatment of POW's
6 was generally good during the time KIMURA was in Burma
7 and that letters of thanks were received from former
8 POW's.

9 KIM-106. ICHIDA, who was KIMURA's Chief of
10 Staff in Burma, stated that supplies had almost ceased
11 to come from Japan in 1943.^a He further testified
12 concerning the efforts made by KIMURA to maintain
13 discipline among his troops and to gain and maintain
14 the confidence of the natives. He also testified con-
15 cerning the actions of the Burma National Defense Army
16 and guerrillas.^b ICHIDA stated that not one single
17 instance of unlawful conduct was ever reported to the
18 Army Headquarters and that he was certain that no
19 orders were ever issued by KIMURA for perpetration of
20 atrocious acts.^c That the Burma Area Army had no part
21 in the construction, maintenance and operation of the
22 Burma-Siam Railway.^d And that the Tavoy and Mergui
23

24 (KIM-105. a. Tr. 27,538

b. Tr. 27,544

25 (KIM-106. a. Fr. 27,575

b. Tr. 27,579-80

c. Tr. 27,583

d. Tr. 27,584)

1 army districts were transferred to the jurisdiction
 2 of the Thailand Area Army in December 1944.^e He tes-
 3 tified that the Burma Area Army had no command over
 4 the air force.^f

5 KIM-107. The prosecution refers to exhibit
 6 1541, containing the report of Captain TAZUMI's trial.^a
 7 Please note that the date of the alleged offense is
 8 not given. TAZUMI testified that he did not remember
 9 of any illegal acts by Japanese guards upon POW's
 10 after September 1944.^b He also testified about the
 11 kind treatment given to a British naval officer. He
 12 further testified that after July 1944 the number of
 13 patients in Rangoon Jail gradually decreased and the
 14 health of the POW's took an uptrend.^c It was impossible
 15 for them to keep hygienic conditions good on account
 16 of the shortage of medicine but generally speaking
 17 the camp was in good condition. POW's worked seven
 18 hours a day. Vegetables and other products were
 19 supplied.^e Letters were received^f from Brigadier
 20 Hobson and Major Loring, British officers representing
 21 the POW's, expressing their thanks for the fair treatment
 22 of POW's. Supplies from the rear were very scanty but
 23

24 (KIM-106. e. Tr. 27,584

(KIM-107. d. Tr. 27,569

f. Tr. 27,588

c. Tr. 27,571

25 (KIM-107. c. Tr. 27,594

f. Tr. 27,573)

b. Tr. 27,573-B

c. Tr. 27,568

every effort was made for the good treatment of POW's. ^g

1 KIM-108. Prosecution exhibit 1541-A states
2 that: "It was stated in several of the affidavits
3 that the accused TAZUMI was a better prison commandant
4 than any of his predecessors." ^a The evidence shows
5 that TAZUMI was the commandant while KIMURA was in
6 ^b Burma.
7

8 KIM-109. There is in evidence an excerpt
9 from the "Biennial Report of General Marshall relative
10 to the progress of the Burma Campaign." ^a It corrobor-
11 ates other testimony concerning the miserable condition
12 of the Japanese Army in Burma while KIMURA was in
13 command. The Allies were not making it easy for them
14 to maintain discipline and get supplies.

15 KIM-110. YOSHIDA testifies that the Japanese
16 Army and the Burmese people were well disposed toward
17 each other because of racial similarities. He also
18 testified concerning the impossibility of commanders
19 communicating with their troops. He further testified
20 concerning the conditions generally and of the efforts
21 of KIMURA to maintain discipline.
22

23 (KIM-107. g. Tr. 27,542
24 (KIM-108. a. Tr. 31,748
b. Tr. 27,543
25 (KIM-109. a. Tr. 27,596
(KIM-110. a. Tr. 27,605)

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1445, a recess was
4 taken until 1500, after which the proceed-
5 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Howard.

4 MR. HOWARD: KIM-111. HIRAKA testified concerning
5 KIMURA's efforts to have the Burmese people treated
6 with kindness^{a.} and that upon the withdrawal of Japanese
7 troops from Rangoon KIMURA prohibited by order the
8 burning of the property of the Burmese people.^{b.}

9 KIM-112. HONDA testified that he was in com-
10 mand of the 33rd Unit under the Burma Area Army from
11 April 1944 to the end of hostilities, and I quote:
12 "I have read the court exhibits concerning the alleged
13 atrocities in Burma. Of the alleged crimes mentioned
14 in exhibit 1537-A and 1549 to 1553-A inclusive, I
15 state that no orders of any kind were given by me con-
16 cerning the matters and I knew nothing about the illegal
17 acts mentioned at all, notwithstanding that they appear
18 to have happened in the zone of operations under my
19 charge."^{a.}

20
21 He further testifies concerning the efforts
22 of KIMURA to maintain discipline, saying that KIMURA
23 laid emphasis on the proper use of reward and punish-
24 ment,^{b.} and instructed them to put the "Battlefield

25 KIM-111. a. Tr. 27,610.
b. Tr. 27,613.
KIM-112. a. Tr. 31,730.
b. Tr. 31,731.

Instructions" in practice.

1 SAKURA testified that no retaliatory measures
2 were to be taken against those who had rebelled among
3 the Burmese National Army. Those who were surrend-
4 ing were to be protected. So KIMURA ordered.

5 KIM-113. YAMAGUCHI testified that the Aviation
6 Division in Burma, the Hikari Organ in charge of Liaison
7 Affairs with the Indian National Army, the South Field
8 Railway Corps, the Marine Transport Corps and the Naval
9 Base Forces, all of whom were in Burma, were not under
10 the command of KIMURA.^{a.}

11 KIM-114. ICHIDA testified concerning the Moul-
12 mein case.^{a.} He gave evidence that the Burmese who had
13 been kept in custody in Moulmein had been handled by
14 the military police without orders from anyone. He
15 further testified that reports concerning the Burma
16 atrocities would have come to him in headquarters but
17 that none were received. He also testified concerning
18 the effort of KIMURA to maintain discipline.^{b.} He gave
19 examples of punishment meted out by KIMURA.^{c.}

20 KIM-115. TAKAGI testified that KIMURA did not
21 order any of the alleged illegal acts committed in Burma.^{a.}

22 KIM-116. TANAKA, Nobuo, testified concerning
23 the efforts of KIMURA to maintain discipline.^{a.} He

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25
KIM-113. a. Tr. 31,747. KIM-114. c. Tr. 31,738.
KIM-114. a. Ex. 1539. KIM-115. a. Tr. 31,744.
b. Tr. 31,735. KIM-116. a. Tr. 31,723.

1 also testifies concerning the Kalagon Massacre,
 2 explaining that the major in charge was the highest-
 3 ranking officer held responsible. He was obliged to
 4 order Colonel TSUKADA to suppress some guerrillas near
 5 Kalagon and he sent clothes and provisions to the people
 6 for their pacification. But the Kalagon massacre broke
 7 out due to an abnormal action of a battalion commander.
 8 General TANAKA did not order any such atrocity and did
 9 not learn about it until after hostilities had ceased.
 10 He was not indicted for any offense.

11 KIM-117. The prosecution, in their answer to
 12 our motion to dismiss,^{a.} while discussing the respon-
 13 sibility of commanders in the field, mentioned the
 14 decision of the Supreme Court of the United States in
 15 the YAMASHITA case. In order to show that they did
 16 not rule upon whether or not a wrong decision was made
 17 by the Military Tribunal trying YAMASHITA, I quote from
 18 the decision of the Supreme Court of the United States:
 19 " . . . We all emphasized in ex parte Quirin, as we do
 20 here, that on application for habeas corpus we are not
 21 concerned with the guilt or innocence of the petitioners.
 22 We consider here only the lawful power of the commission
 23 to try the petitioner for the offense charged. In the
 24 present cases, it must be recognized throughout that
 25 KIM-117. a. Tr. 16,787.

the motion to dismiss, while discussing the respon-
 sibility of commanders in the field, mentioned the

1 the military tribunals which Congress has sanctioned
2 by the Articles of War are not courts whose rulings and
3 judgments are made subject to review by this Court . . .
4 If the military tribunals have lawful authority to hear,
5 decide and condemn, their action is not subject to
6 judicial review merely because they have made a wrong
7 decision on disputed facts."

8 And again on page 9 they say: "We do not here
9 appraise the evidence in which petitioner was convicted.
10 We do not consider what measures, if any, petitioner
11 took to prevent the commission, by the troops under
12 his command, of the plain violations of the law of war
13 detailed in the bill of particulars, or whether such
14 measures as he may have taken were appropriate and
15 sufficient to discharge the duty imposed upon him.
16 These are questions within the peculiar competence of
17 the military officers composing the commission and were
18 for it to decide."^a

19 The above quotation is from the majority
20 decision of the court. One of my colleagues, Mr. Cole,
21 will quote from Mr. Justice Murphy's dissenting opinion
22 later.
23

24 We submit that KIMURA took appropriate and
25 KIM-117. a. Supreme Court of the U.S., Nos. 61 and 672
Miscellaneous - Oct. Term 1945.

1 sufficient measures to discharge the duty imposed upon
2 him in Burma.

3 AFTER PROSECUTION CLOSED.

4 KIM-118. After the prosecution had closed
5 their case and while the individual defense of KIMURA
6 was being presented, the prosecution placed in evidence
7 their exhibit 3367-A.^a The prosecutor cross-examined
8 witness KAWAHARA concerning this document after having
9 distributed mimeographed copies in English to members
10 of the Tribunal. The English copies show a distorted
11 picture of the Japanese original. The prosecutor's
12 questions and the witness's answers clear up the dis-
13 tortion to a certain extent but not completely. An
14 examination of the original will disclose that it is a
15 printed form with various rectangles thereon. One
16 rectangle has the word Minister printed in it. Under
17 that rectangle are two others, in which one is printed
18 Vice-Minister and the other Parliamentary Vice-Minister.
19 Below these two rectangles are three rectangles in
20 which the words Chief of Competent Bureau, Senior Adju-
21 tant, and Councillor respectively are printed. Various
22 other rectangles are below these.

23
24 KIM-119. The following is typewritten on
25 the form, "Regarding the Visit of Swiss Representatives
KIM-118. a. Tr. 31,791.

1 to British POW's and Internees." In the rectangle with
2 Minister the one character meaning "delegate" is typed.
3 In the rectangle with Vice-Minister the word "delegate"
4 is also typewritten. In one rectangle is typewritten
5 "military affairs section." In another, "Military
6 Administration Section." Under Military Administration
7 Section is the signature of YOTSUMOTO indicating that
8 he drafted the document. The signature of KAWAHARA,
9 UEMURA, YAMAZAKI, MAKI and IIO also appear.

10 KIM-120. On cross-examination the witness
11 KAWAHARA made it clear that the handling of the matter
12 was delegated by the War Minister to the chief of the
13 competent bureau, UEMURA, and that as a matter of form
14 the character "I" meaning delegated, was customarily
15 placed after both the words Minister and Vice-Minister
16 when authority is delegated to bureau chiefs by the
17 Minister. He further testified that it was a matter
18 of form that the terms Vice-War Minister and Vice-
19 Minister of Foreign Affairs appeared on the document.

20 KIM-121. KAWAHARA also testified that KIMURA's
21 seal did not appear on the document in question and
22 that KIMURA had not seen it.
23 a.

24 KIM-122. It is a good example of a Vice-
25 Minister Note (not by order) about which KAWAHARA
KIM-121. a. Tr. 31,800.

1 explained.^{a.} He said that answers to inquiries not
2 only included the matters under the charge of the Vice-
3 Minister but they often included matters decided by
4 the War Minister or under the charge of bureau chiefs.
5 Moreover, at that time the War Ministry usually des-
6 patched an average of approximately 4,000 official
7 documents a day and most of these documents dealt with
8 matters under the charge of chiefs of bureaus. All of
9 this is in accordance with the General Rules Concerning
10 the Organization of the Ministries;^{b.} particularly
11 Art. 2, Art. 16 and Art. 18 which have been previously
12 mentioned in this summation. We submit that the only
13 matters that could be legally re-entrusted are those
14 set out in Art. 27 of Exh. 3348.

15 KIM-123. KAWAHARA testified that matters in
16 the War Ministry concerning the treatment of POW's lay
17 chiefly in the hands of the Chief of the POW Control
18 Bureau, but that other chiefs of bureaus disposed of
19 the POW matters which fell under their jurisdiction,
20 holding themselves directly responsible to the Minister.^{a.}

21 KIM-124. On 27 October 1947, the prosecution
22 placed in evidence exhibit 3367-B in a similar manner
23 that exhibit 3367-A was introduced.^{a.} Mimeographed

24 KIM-122. a. Tr. 31,756.
25 b. Tr. 17,484-86.
KIM-123. a. Tr. 31,758.
KIM-124. a. Tr. 31,797.

1 English copies were distributed to Members of the
2 Tribunal which did not accurately depict the original.
3 In the original there is a rectangle with "designation
4 of decision" printed therein. Within this rectangle
5 the character Vice-Minister is rubber stamped.

6 KIM-125. Among other things on the document
7 is a plan of notification from the Vice-Minister to the
8 Chief of the Staff of the Eastern Army stating, "Dr. F.
9 Paravicini, the representative in Japan of the Red
10 Cross International Committee, has been given permission
11 to inspect the Tokyo POW Camp in the beginning of
12 December. You are asked to deal suitably with the matter.
13 I notify this to you by order." This is an example of a
14 Vice-Minister's Note by Order as explained by KAWAHARA
15 on 24 October 1947.^a He said that documents sent and
16 received by the Vice-Minister comprised in their con-
17 tents not only the matters delegated to him but also
18 those decided by the Minister and those delegated to
19 bureau chiefs. He also stated that the mere fact that
20 a man's name was placed on a piece of official corres-
21 pondence or order did not necessarily mean that such
22 person was responsible for the subject matter therein
23 contained. To make this clear, the "note sent by order"
24 was invariably preceded by an introductory remark,
25 KIM-125. a. Tr. 31,755-6.

1 "as the Minister has decided so I send this note
2 by order."

3 KIM-126. This is evidently a matter the
4 policy of which had been made by the War Minister and
5 the carrying out of the policy entrusted to a bureau.
6 In this regard you will remember that exhibit 3367-A
7 in speaking of permitting visits by agents of the
8 protecting powers of the enemy used the words, "since
9 it is the Imperial policy . . ." There has been
10 ample evidence that KIMURA had no power of decision
11 in matters of policy.^{a.}

12 KIM-127. Concerning item 39 of IPS document
13 1552 which is similar to exhibit 3367-B, Captain
14 Kraft, the Language Arbiter, stated, "The third line
15 of the English copy, 'Decision authorized by: Vice-
16 Minister,' gives the wrong impression because in
17 the Japanese it is a form which says 'Decision
18 authorized by Vice-Minister,' but it does not have
19 the Vice-Minister's authorization there. It would
20 appear that the authorization has been given there,
21 but it has not, From the English it would appear
22 so."^{a.} An examination of the Japanese original of
23 exhibit 3367-B will show that there is no seal of the
24

25 KIM-126. a. Tr. 31,719-21; Tr. 14,387-88.
KIM-127. a. Tr. 38,160.

1 Vice-Minister thereon. In our submission the above-
2 quoted words apply equally to exhibit 3367-B and
3 item 39.

4 IN REPLY TO CERTAIN PARTS OF PROSECUTION
5 SUMMATION.

6 KIM-128. Prosecution in their summation,
7 paragraph KK-2, mention that KIMURA was decorated in
8 recognition of his services during the China Incident.
9 We do not deny that KIMURA was one of the 3,319,548
10 Japanese who were given awards in connection with
11 the China Incident.^{a.}

12 KIM-129. Prosecution in their summation,
13 par. KK-4, say in referring to KIMURA, as Vice-Minister
14 of War, it was part of his duty to attend meetings
15 of Imperial General Headquarters but there is no evi-
16 dence that he ever attended a meeting. On the con-
17 trary, we have cited evidence that TOJO never attended
18 and that KIMURA could only attend as TOJO's attendant,
19 in paragraph 58 of this summation.

20 KIM-130. In paragraph KK-6 they state that
21 he was interfering in internal civil affairs of Man-
22 chukuo. The evidence shows that KIMURA was actually
23 with the Kwantung Army only a few months and did not
24 have time to get his feet on the ground, so to speak.^{a.}
25

KIM-128. a. Tr. 28,032.

KIM-130. a. Ex. 113, ex. 3347; Tr. 31,657.

1 It has been shown that as a matter of form it was
2 customary for correspondence from the Kwantung Army
3 to the War Ministry to be sent in the name of the
4 Chief of Staff. It is highly improbable that KIMURA,
5 who was appointed Chief of Staff on 22 October, would
6 have had time to go to Manchuria and take over such
7 matters by 5 November. Even if he had, his name and
8 seal would have appeared on the telegram on which
9 neither of them do. In paragraph KK-8 they say that
10 TAKEBE gave evidence that KIMURA had given him orders
11 designed to further preparations for an attack on
12 Russia. TAKEBE testified by affidavit that he re-
13 ceived orders from General KIMURA, Chief of Staff,
14 but does not say what kind of orders they were,
15 whether written, oral, or whether they were in prepa-
16 ration for a defensive war by the Kwantung Army or
17 otherwise. b.
18 It was customary for all orders issued
19 by order of the Commander-in-Chief to be signed by
20 the Chief of Staff. c.

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25 KIM-130. b. Tr. 7,584.
c. Tr. 31,757.

1 KIM-131. In paragraph KIM-9, the prosecu-
2 tion says that KIMURA by assisting in political,
3 economic and military preparations which he knows
4 are directed towards aggressive war, commits a
5 crime. No doubt KIMURA knew that Japan was prepar-
6 ing for war. All active chiefs of staff and generals
7 in the world are continuously preparing and planning
8 in some degree for war. But who was KIMURA, a sol-
9 dier who never took part in politics, to decide
10 whether a war was aggressive or defensive? Carlyle
11 described the professional soldier adequately when
12 he said: "If a man becomes a soldier, his soul and
13 his body thereby become the property of his commanding
14 officer. He is not allowed to decide for himself
15 whether the cause for which he fights is good or bad.
16 His enemies are selected for him and not by him. It
17 is his duty to obey and ask no questions." There is
18 no evidence that KIMURA took any part in the formula-
19 tion of an aggressive policy.

20 KIM-132. Paragraph KIM-11, in referring to
21 KIMURA as Vice War Minister, the prosecution says:
22 "To him, we find, are entrusted matters concerning
23 the control and utilization of Manchurian resources,
24 matters concerning general mobilization in Korea,
25 Formosa, and the colonies, matters concerning peace

1 time facilities relative to the general mobilization
2 program, and matters concerning the volume of war-
3 time requirements in connection with the general
4 mobilization program." However, there is no evidence
5 that KIMURA performed any acts relative to the en-
6 trusted matters listed in prosecution summation
7 paragraph KK-11.

8 KIM-133. Prosecution in their paragraph
9 KK-13, say that KIMURA received a communication from
10 the French Indo-China Expeditionary Force. Actually
11 all correspondence for the War Ministry was addressed
12 to the Vice-Minister. Upon its receipt it was dis-
13 tributed to the competent Bureaus. KIMURA could not
14 and did not see it all.

15 KIM-134. In reply to prosecution's paragraph
16 KK-14 and KE-17, we refer you to the testimony of
17 NUTO (T. 33106-7.)

18 KIM-135. In paragraph KK-19, they refer to
19 a signal received by KIMURA in October 1941, concern-
20 ing the massacre of French missionaries. While they
21 only offer this to show that he should have been put
22 on his guard, we would like to point out that the
23 signal was addressed to the Vice-War Minister and does
24 not have KIMURA's seal thereon.
25

KIM-135. a. Ex. 3366; T. 31784.

1 KAWAHARA testified that KIMURA did not see this
2 b.
3 telegram.

4 KIM-136. In paragraph KK-21 they say that
5 KUDO, a witness from the Foreign Office, stated that
6 unimportant protests were referred to the Prisoner of
7 War Information Bureau but important ones were re-
8 ferred to the Vice-Minister of War. On cross-
9 examination the witness KUDO was asked if while he
10 was in office anything was sent to the Vice-Minister
11 of War. He answered that he thought that there were
12 but he did not remember.^{a.} KAWAHARA testified that
13 correspondence was exchanged between the Prisoners of
14 War Information Bureau and the outside directly, not
15 through the Adjutant Department of the War Ministry.^{b.}
16 Therefore, KIMURA would not see them.

17 KIM-137. In paragraph KK-22 they say that,
18 "it was the duty of KIMURA, in common with other
19 officials at the War Ministry, to insure that these
20 protests were adequately investigated and if they
21 were founded on fact to remedy the state of affairs
22 which gave rise to them." It has been shown that
23 KIMURA was not entrusted with any matters of this kind.^{a.}

24 KIM-135. b. T. 31799.

25 KIM-136. a. 27159.

KIM-136. b. T. 31759.

KIM-137. a. Ex. 3349, T. 31665.

1 MIKI, who was a bureau chief, testified that he never
2 heard of any report on the protests against the mal-
3 treatment of POW's during KIMURA's tenure of office
4 as Vice-War Minister. ^{b.} TANAKA, Tadekatsu, testified
5 likewise; ^{c.} also ^{d.} KAWAHARA.

6
7 We submit that KIMURA was not responsible
8 for all acts or failures of the War Ministry simply
9 because his name appeared on incoming correspondence.

10 Please remember that comparatively few pro-
11 tests were received before KIMURA resigned. It is
12 true that after he resigned many protests were received.
13 TOJO testified that "the only complaints that ever came
14 to my notice were in connection with food and so
15 forth. Atrocities were not brought to my notice at
16 all. I am astounded at the truth regarding atrocities
17 that is now being revealed in the newspapers."

18 KIM-137-A. KAWAHARA testified that, "Both
19 terms, Vice-Minister of War and Vice-Minister of
20 Foreign Affairs, are used on the document as a mere
21 matter of form. That is to say, it is a matter of
22 custom that all documents sent from one ministry to
23 another ministry -- sent from another ministry to
24 the War Ministry are sent in the name of the
25

KIM-137. b. T. 31717.
c. T. 31815.
c. T. 31754.

~~Vice-Minister of that ministry and are addressed to~~
1 the Vice-Minister of the War Ministry. And, there-
2 fore, even though the document itself is addressed
3 from a vice-minister to a vice-minister, it is
4 erroneous to assume that it is actually addressed
5 only to the Vice-Minister; rather it should be in-
6 terpreted as being sent -- as a document being sent
7 from one ministry to another ministry."^{a.}

8 KIM-138. In paragraph KK-25, they say,
9 "KIMURA's attitude towards prisoners of war is shown
10 particularly in his complaint that the accommodations
11 which it was proposed to provide for the prisoners
12 were too good."

13 An examination of the exhibit cited shows
14 that theological schools and a foreigners school were
15 being considered as quarters for POW's. The War
16 Ministry asked if they were not too good for POW's
17 and requested that full plans be drawn up and submitted
18 after investigation.

19 We submit that if the War Ministry had deemed
20 it necessary to elaborate on the matter they would
21 have said, "There is in Korea a silk reeling warehouse
22 and a military barracks which is well suited for POW's.
23
24 KIM-137-A. a. T. 31795.
25

1 These places are better for POW's and the theological
2 schools are better for schools."

3 The exhibit shows that adequate quarters
4 were made available for P.W's. It also shows that
5 the reply made by the War Ministry was personally
6 approved by the War Minister.

7 KIM-139. In paragraph KK-28 they say that
8 KIMURA was aware that the oath not to escape was
9 being compulsorily administered to prisoners of war.
10 They cite exhibit No. 1975. There was nothing read in
11 the record from exhibit No. 1975 concerning anyone
12 taking an oath. An examination of the exhibit dis-
13 closes that there is one sentence in which such an
14 oath is mentioned. However, this sentence was cor-
15 rected by the Language Arbitration Board^{a.} to read,
16 "we were able to secure the pledge from all of them."
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25 KIM-139. a. See record of March 9, 1948; (Transcript
not printed up to this date).

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1 We submit that the above is not evidence
2 that KIMURA knew that an oath was being compulsorily
3 administered. We further submit that there is nothing
4 in the record at any other place that is evidence of
5 such knowledge. There is no evidence that KIMURA saw
6 the correspondence and his seal does not appear on it.
7 The POW Punishment Act providing that POW's would be
8 permitted to pledge that they would not attempt to
9 escape and would receive certain benefits in return
10 was passed after KIMURA resigned.

11 KIM-139A. In Paragraph KK-27, they say
12 that, "KIMURA also knew of the use of prisoners of
13 war in work, having direct connection with the opera-
14 tions of war." They cite exhibits 2010 and 1969 upon
15 neither of which does KIMURA's name appear.

16 KIM-139B. Paragraph 30 of KK-1 says,
17 "KIMURA as a member of Imperial General Headquarters
18 must along with the War Minister and the Chief of the
19 General Staff take the responsibility of ordering in
20 February 1943, the speeding up of the work by three
21 months and thus greatly increasing the already growing
22 death rate."
23

24 In the first place, we submit that KIMURA
25 was not a member of Imperial General Headquarters.^{a.}

KIM-139B.

a. See KIMURA Summation, KIM.56-57-58.

1 TOJO testified that it was the Chief of the
2 Army General Staff who undertook to direct the con-
3 struction work of the railway, but as War Minister
4 he held the administrative responsibility as super-
5 vising authority over the POW's. When informed in
6 May 1943 of deficiencies in the sanitary conditions
7 and treatment of the POW's, he despatched General
8 HAMADA, Chief of the POW Control Section and some
9 surgeons there.^{b.} KIMURA had resigned as Vice War
10 Minister 11 March 1943. TOJO also testified, "I was
11 consulted and agreed to the proposed undertaking by
12 the General Staff. With respect to labor in connection
13 with the work on the railway, I agreed to the employ-
14 ment of prisoners of war, which were placed under the
15 jurisdiction of the War Minister."^{c.}

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22 KIM-139B.

23 b. Tr. 36422.

24 c. Ex. 3369, par. 9, Tr. 31816.

25

1 KIM-140. Paragraph KK-31 states that, as
 2 Vice-Minister, KIMURA was a member of a conference
 3 which was called on to decide whether some action,
 4 illegal under international law, should be taken against
 5 the Doolittle fliers. We submit that the evidence
 6 does not show that KIMURA attended a conference concern-
 7 ing this matter. He could be strongly opposed to the
 8 decision without attending the conference. We invite a
 9 close reading of the testimony cited by the prosecu-
 10 tion.^a We have already shown that KIMURA had nothing
 11 to do with the Articles of War in Paragraph 96 of this
 12 summation. Exhibit 1992 is an example of a Vice Min-
 13 ister's Note by Order.^b

14 KIM-141. The Japanese Military Court Martial
 15 Law which was in effect even before the war started
 16 provided that the Temporary Court Martial shall be
 17 speciallly established as needed by the army and organ-
 18 ized in the event of war or an incident.^a The Language
 19 Board corrected exhibit 1992, which is the alleged
 20 illegal order signed by KIMURA, to read: "In regards
 21 to the above courts-martial, the provisions of the
 22 speciallly established courts-martial stated in the
 23 Army Courts-Martial Law shall be applied."^b

25 KIM-140. a. Tr. 14,387

b. Ex. 3364, par. 8; ex. 3369, par. 8, tr.
 14,385; see KIM-125-126 of this summation

KIM-141. a. Tr. 31,678

b. Tr. 31,676

KIM-142. Paragraph KK-32 states, "But it
1 is very clear from the evidence of TANAKA, Ryukichi,
2 that in the absence of the accused TOJO, the accused
3 KIMURA has carried out the duties of the War Minister
4 other than those relating to cabinet matters, such as
5 policy making, politics, economics, and diplomacy."

6 We read this evidence exactly opposite, which I quote:

7 "Q Now getting back to the question of when
8 TOJO was absent from his office as War Minister, after
9 he became Premier, did he turn over any of his authori-
10 ties and responsibilities to KIMURA?"^a

11 "TANAKA: Yes, some very small matters rela-
12 tive to business routine, but with respect to state
13 affairs such as policy making, politics, economics, and
14 diplomacy, not at all."^b

15 "Q Actually, then, TOJO was War Minister
16 as well as Premier?

17 "TANAKA: Yes.

18 "Q And even while TOJO was out of his
19 office and KIMURA was acting as War Minister, he never
20 made any important decisions?

21 "A He cannot make any important decisions."

22 Also please remember that TANAKA was called by the

23 KIM-142. a. Tr. 14,387
24 b. Tr. 14,388
25

1 prosecution and not by KIMURA. TOJO testified that
2 KIMURA's status was not changed after he, TOJO, became
3 concurrently War Minister and Prime Minister.^c

4 KIM-143. In paragraph KK-32 they say that
5 "In addition, these regulations show that before any
6 important matters are formulated by the Bureau Chiefs
7 they must receive the approval of the Minister and
8 Vice-Minister for War, and similarly, none of the
9 bureaus can carry any decision into effect without the
10 approval of the Minister and Vice-Minister. MIKI
11 said, "Of course it is very desirable to obtain the
12 approval both of the War Minister and the War Vice-Minis-
13 ter, but it is not a violation of regulations to carry
14 out any matters with the direct approval of the War
15 Minister and not obtaining the approval of the Vice-
16 Minister.

17 Question by the President: "When the War
18 Minister decides the policy, has that policy to be
19 approved by the Vice-Minister?

20 "MIKI: My belief is that no approval was
21 necessary."^a See also the testimony of SAWAMOTO and^b
22 SHIBAYAMA.^c

23
24 KIM-142. c. Tr. 36,497; see KIM-41 of this summation
25 KIM-143. a. Tr. 31,721
b. Tr. 31,673
c. Tr. 31,802

1 KIM-143-A. The Chiefs of Bureaus and Depart-
 2 ments were under direct control of the Minister, ad-
 3 ministered their duties by order of the Minister,
 4 and were directly responsible to the Minister. There-
 5 fore, they could present their opinion directly to the
 6 Minister and ask his decision, and the Minister could
 7 directly command and order them.^a Consequently, during
 8 KIMURA's tenure of office as Vice-Minister the various
 9 bureau heads frequently got into direct contact with
 10 the Minister and decisions were made without the pres-
 11 ence or consultation with the Vice-Minister.^b

12 KIM-144. Paragraph KK-41 states, "Until
 13 December, 1944, the internment camp at Tavoy was under
 14 the command of the Independent 24th Mixed Brigade, a
 15 unit under KIMURA's command." Please remember that
 16 KIMURA did not arrive in Burma until the middle of
 17 September, 1944. If you care to examine the exhibit,
 18 you will find that the last date of an atrocious act
 19 at Tavoy internment camp was April, 1943, and there
 20 are none mentioned as having occurred during the
 21 brief time KIMURA was in command.^a

22 We wish to call your attention to the fact
 23
 24 KIM-143-A. a. Ex. 3031; tr. 27,077; tr. 31,804; 31,672,
 31,712
 25 b. Tr. 14,398
KIM-144. a. Ex. 1555

1 that most of the atrocities which occurred near Ran-
2 goon were after the headquarters had moved to Moulmein
3 in April. There has been some conflict of evidence
4 as to who was in command of the Rangoon Jail POW Camp.
5 We shall not discuss that at length, because the evi-
6 dence shows that conditions were generally good^b during
7 the time that KIMURA was in command, if he was. We
8 refer you to the summations of HATA and DOHIMARA
9 regarding the responsibility of an area commander
10 concerning prisoner-of-war camps and unlawful acts
11 committed by Japanese troops. KIMURA came under the
12 same regulations.
13

14 KIM-145. The prosecution also says in para-
15 graph KK-44: "He must have been informed of a protest
16 sent on 14 July 1944 as to the treatment of prisoners
17 in the Moulmein area. It was not answered until 15
18 May 1945, and as KIMURA took over command on the 12th
19 of September 1945, it is reasonable to assume that it
20 was investigated, if at all, during the period of his
21 commandership." In answer to that, we would like once
22 more to point out that for a period of a year and a
23 half between the time that KIMURA resigned as Vice-
24 Minister until he took command of the Burma Area Army,
25 KIM-144. b. KIM-108-109-106

1 ~~he was in ordinance administration and had nothing~~
2 whatever to do with anything of this nature. He was in
3 that position on the 16th day of July 1944 when the
4 protest was lodged. It is true that KIMURA was in
5 command of the Burma Area Army in May 1945. You will
6 recall that IKEJIRI, who was Adjutant of the Burma
7 Area Army, testified as follows:

8 "Q Did you ever as an officer handling
9 correspondence in relation to POW's receive an official
10 communication inquiring into the conditions of prisoners
11 in Moulmein camps?

12 "A (IKEJIRI) No."^a

13 KIM-145-A. In paragraph KK-46 they say
14 that "Captain TAZUMI gave the lie to the contention
15 that the Rangoon Jail Prison Camp did not come under
16 the control of the Burma Area Army." Please remember
17 that the Interrogations of TAZUMI were placed in evi-
18 dence by the defense. If KIMURA had been trying to
19 evade any responsibility in this matter, we would not
20 have offered the evidence of TAZUMI in the first place.
21 We submit that if the Tribunal is going to take any
22 part of TAZUMI's evidence as the truth, then his testi-
23 mony concerning the generally good conditions at Rangoon
24 should be given full weight."^a

25 KIM-145. a. Tr. 27,552

KIM-145-A a. Tr. 27,565; tr. 27,573-A

CONCLUSION

1 KIM-146. I should like to point out that
2 the prosecution did not see fit to indict the man
3 who held the comparable position of KIMURA in the
4 Navy Ministry during the Pacific War, namely SAWAMOTO,
5 who was the Navy Vice-Minister.
6

7 KIM-147. In conclusion, we submit that the
8 prosecution has wholly failed to prove their case
9 against KIMURA. On the other hand, we have shown
10 that KIMURA was a professional soldier of good
11 character who followed all of the precepts of honor-
12 able soldiers. He left matters of politics and
13 diplomacy to those who were trained in such and
14 devoted his efforts to being an obedient servant of
15 his country. We have shown that while KIMURA was
16 Vice-War Minister he had no more authority than any
17 other Vice-Minister. When KIMURA was indicted, the
18 prosecution probably thought that KIMURA was in
19 effect the War Minister, which was a natural assump-
20 tion to be made by those not entirely familiar with
21 all of the facts.
22

23 We have shown that KIMURA had no authority
24 to decide any matters, except a few unimportant
25 "entrusted matters," none of which were policy
making, and was merely an administrator and coordinator

of the efforts of the members of the Ministry.

1 The prosecution seem to think that he should
2 have resigned sooner. Every member of this Tribunal
3 knows how difficult it is in war times for a soldier
4 to exercise his rights as an individual. A conscien-
5 tious soldier submerges his higher self and obeys the
6 will of the group. Are we to condemn a soldier for
7 practicing all of those things which have been tenets
8 of the soldier's creed for ages? If we as world
9 citizens are to have soldiers serve for us, should
10 we not assure them that obedience is still required
11 from a soldier? Are not future soldiers entitled to
12 the assurance that they will not be punished for
13 doing their utmost as soldiers?

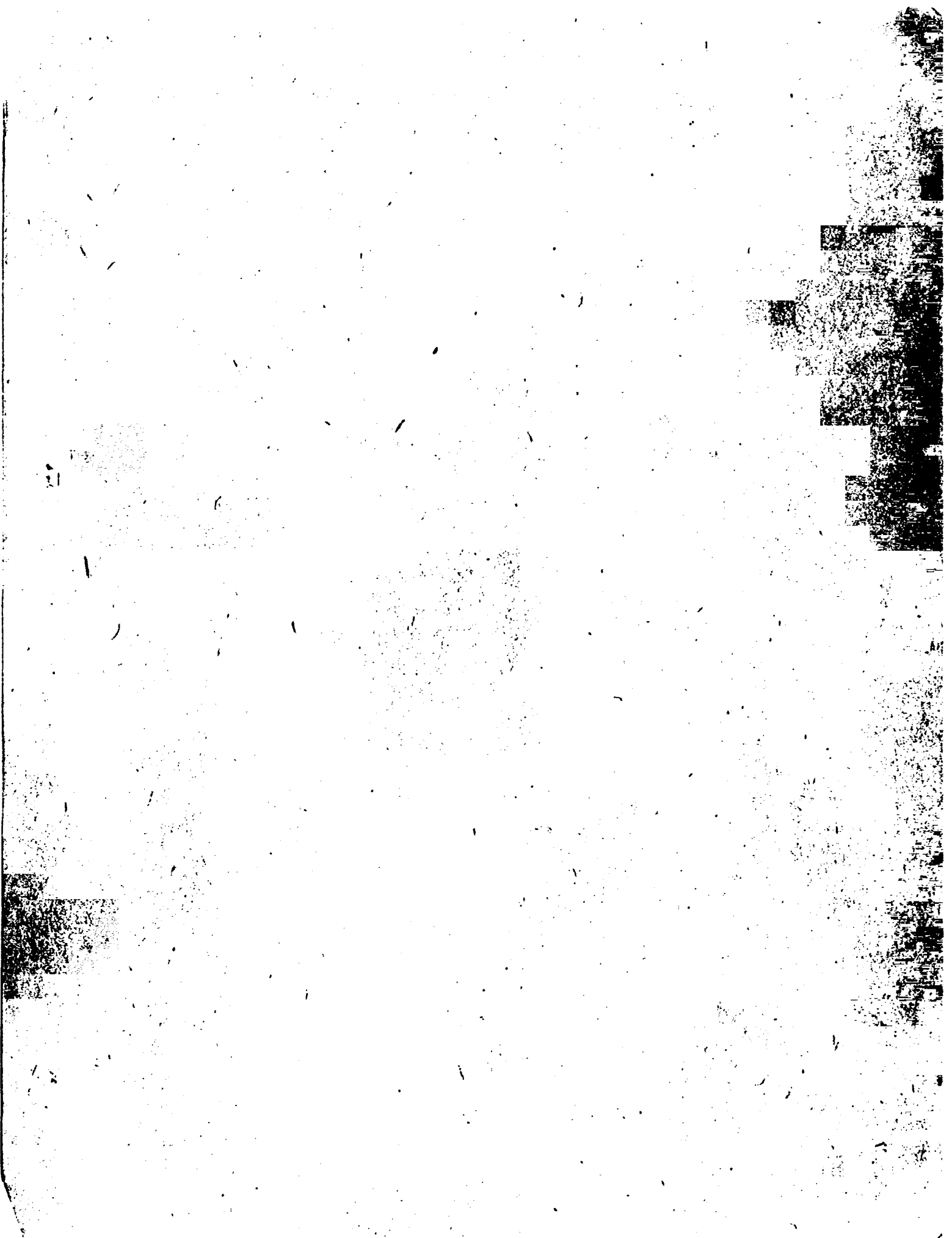
15 KIMURA, as the Commander of the Burma Area
16 Army, did what he could to prevent criminal acts by
17 his soldiers to the very last; even in the great con-
18 fusion of defeat which made all efforts extremely
19 difficult. We ask the Tribunal to recognize the good
20 will of KIMURA.

22 We submit that KIMURA has not violated any
23 law of the Charter or any international law and ask
24 that he, as a member of the disarmed Japanese military
25 forces, be permitted to return to his home and given
an opportunity to lead a peaceful and productive life.

1 THE PRESIDENT: It is now too late to start
2 on a new case. We will adjourn until half-past nine
3 on Monday morning.

4 (Whereupon, at 1547, an adjournment.
5 was taken until Monday, 22 March 1948, at
6 0930.)

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22 MARCH 1948

I N D E X

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1 Monday, 22 March 1948

2 - - -

3
4
5 INTERNATIONAL MILITARY TRIBUNAL
6 FOR THE FAR EAST
7 Court House of the Tribunal
8 War Ministry Building
9 Tokyo, Japan

10 The Tribunal met, pursuant to adjournment,
11 at 0930.

12 Appearances:

13 For the Tribunal, all Members sitting, with
14 the exception of: HONORABLE JUSTICE MYRON C. CRAMER,
15 Member from the United States of America and HONORABLE
16 JUSTICE E. H. NORTHCROFT, Member from the Dominion of
17 New Zealand, not sitting from 0930 to 1600; HONORABLE
18 JUSTICE HENRI BERNARD, Member from the Republic of
19 France, not sitting from 1500 to 1600.

20 For the Prosecution Section, same as before.

21 For the Defense Section, same as before.

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23 (English to Japanese and Japanese
24 to English interpretation was made by the
25 Language Section, IMTFE.)

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present
except MATSUI, SHIRATORI and UMEZU who are represented
by counsel. The Sugamo Prison surgeon certifies that
they are ill and unable to attend the trial today.
The certificates will be recorded and filed.

Captain Brooks.

MR. BROOKS: If your Honors please, in the
KOISO summation the words or figures and matters
enclosed in parenthesis will not be read at the
lectern, nor Index pages A to G. I ask that the un-
read portions be incorporated in the transcript as if
read. The documents mentioned by the prosecution in
the KOISO summation, pages LL-1 to 35, commencing on
transcript page 41,165 are described at pages A to G
for the convenience of the Court with relevant comments.
It will be noticed that KOISO is not named in the
majority of the documents mentioned by the prosecution
in the KOISO summation.

INDEX TO KOISO SUMMATION

I. Charges against KOISO (Prosecution
summation pages LL-1 to 35) (T. 41,165)

Section 1 - Count 1 - Conspiracy

Section 2 - Counts 2, 6, 18, 27 - Manchuria

1 Section 3 - Counts 3, 6, 29 and 48 - China
2 Section 4 - Count 5 - Tripartite Alliance
3 Section 5 - Counts 4, 14 and 32 - Netherlands
4 Section 6 - Counts 4 and 15 - France
5 Section 7 - Counts 4, 17, 26 and 36 - USSR
6 Section 8 - Counts 7 to 13, 16, 29 to 31 and
7 34 - KOISO-YONAI Cabinet
8 Section 9 - Counts 1, 44, 48 to 51 and 53 to
9 55 - Education, Murder, POW
10 Section 10 - Concluding Argument.

11 Documents mentioned by Prosecution in KOISO
12 Summation.

13 Ex. 57, Tytton Report, 1 October 1932; KOISO
14 not named therein. T. 493, 502; Par LL-18.

15 Ex. 59, Report of League 24 February 1933,
16 KOISO not named therein. T. 402; Par. LL-19.

17 Ex. 114. Personnel Record of KOISO. T. 733;
18 Par. LL-28, LL-30, LL-31, LL-45.

19 Ex. 164, Record of various Societies. No
20 evidence to show illegal actions by such societies
21 was presented. T. 1,635; Par. LL-4, LL-26.

22 KOISO named among 28 members of Kokuhon-Sha
23 but original of exhibit shows he was not one of the
24 five directors. English copy of Ex. 164 lists 28
25 members with the 5 directors erroneously under

1 "directors". He only attended one meeting and joined
2 to get magazine. See Section 1 (4) page 20 KOISO
3 summation.

4 Ex. 179B, F. KIDO Diary, 5 July 1931.
5 T. 1924-8, 31,240-2; Par. LL-8, LL-23.

6 KIDO admits statement based on hearsay,
7 T. 31,242.

8 Ex. 192A, Chinese Summary of War Crimes
9 T. 2268-2270; Par. LL-28. This is a self serving
10 statement of charges based on hearsay attested by
11 the prosecutor and is no more evidence than the
12 Indictment as it was prepared for this trial. KOISO
13 not named therein.

14 Ex. 230. Letter from Chief of Staff Kwantung
15 Army (KOISO) to Vice Minister of War, YANAGAWA,
16 3 Nov. 1932. T. 2902; Par. 11-27, LL-28.

17 Outline for guiding Manchukuo alleged to have
18 been attached to letter of 3 November 1932 bears date
19 of 8 December 1932. Objected to as dates are impossible
20 to reconcile, T. 2912-3. Draft in English says
21 8 December 1923 but 8 December 1932 in Japanese text,
22 which is admitted correct at T. 2914-5. Arbitration
23 Board at T. 2916 shows dates to be still more im-
24 possible. Document has no probative value, is not
25 authentic, not connected with letter of 3 November 1932

1 which it was alleged contained the inclosure which
2 was not written until one month after letter had been
3 sent. Anyhow KOISO's only connection was as admin-
4 istrative assistant to Commander, to send and receive
5 such messages in the usual conduct of affairs.

6 Ex. 254. Chinese summary of military aggres-
7 sions. T. 3425; Pa. LL-40. No more evidence than
8 prosecution's Opening Statement, T. 3430, a mere
9 charge without proof. Based on hearsay. Self serving.
10 KOISO not named therein.

11 Ex. 276A. Japan Year Book. T. 3699; Prr.
12 LL-40. Not an official document. No better evidence
13 than a newspaper. KOISO not mentioned therein.

14 Ex. 277. KOISO speech before Diet in 1944.
15 T. 3703; LL-47. As to the probative value of speech
16 see T. 3718-9. Premier was ordered to form cabinet
17 with YONAI. Statement of policies were as viewed
18 from the Imperial Rescript as to attitude, does not
19 state it as KOISO's will. The type of speech any
20 Prime Minister might, during a war on taking office
21 under similar circumstances, make.

22 Ex. 517-9. Telegrams of Ott and Ribbentrop.
23 Dated May 1940. T. 11698, 11699, 6156 to 6162; LL-35.
24 Notifying Japan of Germany's disinterest in Netherlands
25 Indies and discussing status quo there. KOISO not

1 named therein.

2 Ex. 520. Telegram Ott, Dated 19 June 1940.
3 T. 6162; LL-33. Relating to Japan's desire for a
4 free hand in Indo-China. Mentioning Foreign Ministry
5 and not Overseas Minister as set out in objection,
6 T. 6165. KOISO not named therein.

7 Ex. 523. Telegram Ott, dated 24 June 1940.
8 T. 6175, 11699; Par. LL-36. Par. LL-36 states MUTO
9 and KOISO were trying to obtain Germany's views con-
10 cerning the Netherlands Indies and Indo-China. However
11 compare the date of this with that of previous tele-
12 grams, Ex. 517 to 520, which show prosecution's pre-
13 sumption is not the case. KOISO and Interpreter
14 TOKUGAWA deny such statements were made by KOISO to
15 Ott.

16 Ex. 527-8. Minutes of 3 Ministers Conference
17 of July 1940. T. 6191, 6212; Par. LL-37. Discussion
18 of attitude toward Southern Regions by War, Navy and
19 Foreign Minister. Plans discussed were never adopted.
20 KOISO not named therein, KOISO retired July 22, 1940
21 from public life to become private citizen until 1942,
22 T. 733, Ex. 114.

23 Ex. 6184. Business Report of South Seas
24 Section in 1940. T. 6844; Par. LL-33. No certificate
25 to meet conditional acceptance, for certificate is to

1 Document of 1942 describing this report. Does not
2 certify as to accuracy and authenticity of report
3 itself. KOISO not named therein.

4 Ex. 619. KIDO Diary 19 June 1940. T. 6824;
5 Par. LL-33. Relates to Ex. 520 and contradicts prosecu-
6 tion presumption as to Ex. 523. That KOISO was asking
7 for information, which was already known in May, Ex. 517
8 to 520. KOISO not named therein.

9 Ex. 661. Decision of Supreme Council,
10 February 1945. T. 7165; Par. LL-49. Relates to
11 steps to be taken in Indo-China owing to development
12 of general situation in the Pacific. KOISO not named
13 therein.

14 Ex. 706. Russian table of Increase of Kwantung
15 Army. T. 7530; Par. LL-43. Series of Charts, etc.
16 prepared in 1946 for purpose of trial by Red Army
17 General Staff in Moscow. Not evidence any more than
18 an opening statement or indictment is evidence.
19 KOISO not named therein.

20 Ex. 1007. Economic policy towards U.S., March 1940
21 T. 9634, Par. 11-38. Foreign Ministry documents
22 dealing with Japanese economic dependence on U.S.
23 Nothing illegal discussed in said document; KOISO
24 not named therein.

25 Ex. 1014. Excerpt Vol. II by Grew. 10 June
1940. T. 9669, 11685; Par. LL-37. Excerpt of press

1 release 17 April 1940. If taken in proper chronological
2 order these documents do not show any improper actions
3 or give rise to any doubtful presumptions. T. 9663-7.
4 KOISO not named therein.

5 Ex. 1294. KIDO Diary 27 June 1940. T. 11708;
6 Par. LL-37. Status quo as to Netherlands discussed
7 by ARITA, Foreign Minister. KOISO not named therein.

8 Ex. 1306. Decision of Liaison Conference,
9 25 June 1941. T. 11753; LL-49. KOISO was private
10 citizen, retired from 22 July 1940 until 1942. Had
11 no connection with drafting said plan. Prosecution
12 only presumed said plan was carried into effect. The
13 evidence shows clearly that authorities on the spot
14 and High Command took steps they did independently
15 of any plan and of the Government. KOISO not named
16 therein.

17 Ex. 1309A. Book by Dr. Von Mook, published
18 1944. T. 11776; Par. LL-36. Discusses Economic
19 Relations and statements of ARITA, Foreign Minister.
20 Has no probative value, immaterial and irrelevant as
21 pointed out at T. 11784 and 11776, and a book could
22 not be cross-examined on opinions and statements made
23 therein. KOISO mentioned on page 16 of Ex. 1309A,
24 T. 11796, as a probable delegate to Netherlands as not
25 being acceptable because of an alleged statement
criticising oppression of indigenous population of the

1 Indies. KOISO not named otherwise. ARITA, Foreign
2 Minister in YONAI Cabinet and YONAI Premier have testi-
3 fied as witnesses here and neither have been indicted,
4 therefore this evidence could not be of value against
5 KOISO if the principals involved are not even charged,
6 how could KOISO be held responsible merely as Overseas
7 Minister for their actions. KOISO retired 22 July
8 1940 until 1942.

9 Ex. 1975. Report from Chief of Staff Korean
10 Army 1942. T. 14520; Par. LL-42. To Vice Minister
11 of War, KIMURA. Relating to British POW a matter
12 completely in the hands of the military authorities
13 over whom KOISO had no control, and KOISO as Governor
14 General had no connection with POW administration as
15 the evidence shows clearly. KOISO not named therein.

16 Ex. 2177A. OKAWA Trial proceedings. T. 15555,
17 15565, 15580-3; Par. LL-9, 12. Statements of OKAWA
18 are not borne out by the evidence of either prosecution
19 or defense witnesses as to KOISO at places cited above.
20 No probative value to this self serving statement of
21 OKAWA and it is impeached by other evidence refuting
22 same as pointed out in Section 1, (2) on page 6 of
23 KOISO's summation.
24

25 Ex. 2214. Captured German Document. T. 15815-8,
32199; Par. LL-31. Alleged Radio report of press

1 interview objected to T. 15812-5 and referred to Lan-
2 guage Section. Confusion between ARITA, Foreign
3 Minister and KOISO, Overseas Minister. ARITA ex-
4 amined on document at T. 30,009 to 30,014. On
5 T. 32,199 prosecution admits KOISO named by error for
6 ARITA and speech was made by ARITA. This is fully
7 discussed in Section 4 (4) page 64 of KOISO summation.

8 Ex. 2215. Minutes of Diet, March 1940.

9 T. 15819; Par. LL-36, 43. KOISO's statement T. 15825
10 is in reply to a request for his opinion by a Diet
11 Member who has made a speech. The reply discusses
12 purely economic and population problems and the pros-
13 ecution's presumption and inferences are erroneous as
14 no evidence supports their contention that this is a
15 significant statement which was acted upon.

16 Ex. 2252. KIDO Diary 17 May 1932. T. 16215;
17 Par. LL-26. KIDO merely states Vice Minister KOISO
18 seems to be in favour of a HIRANUMA Cabinet, source
19 of such information, reliability or significance not
20 shown. HIRANUMA Cabinet never came into power until 1939
21 seven years later.

22 Ex. 3375. KOISO Affidavit. T. 32205; Par. LL-6

23 Ex. 3377. Draft plan for Temporary System,
24 December 5, 1931. T. 32,338; Par LL-21. From Chief
25

1 of Staff of Kwantung Army MIYAKE to Vice Minister of
2 War SUGIYAMA. KOISO said he never saw documents before
3 and there was no indication it was ever adopted.

4 T. 32,335. Document immaterial and irrelevant as to
5 KOISO. KOISO discusses the document on redirect at
6 T. 32453-4. KOISO not named therein.

7 Ex. 3378A. Guidance of Military Government at
8 Manchukuo, August 1, 1934. T. 32,355; Par. LL-21,27,28.
9 Report by Military Government Advisor TADA to Commander
10 of Kwantung Army HISHIKARI. KOISO said he never saw
11 document T. 32,349. Report made after KOISO left his
12 post was for practical control of military administra-
13 tive matters. T. 32,350. Redirect examination at
14 T. 32,454-7 shows report does not encompass control
15 of civil administration. KOISO not named therein.

16 Ex. 3379-A. Letter from Chief of Staff of
17 Kwantung Army KOISO to Vice War Minister. T. 32,377;
18 Par. LL-27, 28. Forwarding Draft Recommendations
19 regarding Tariffs and Customs. This draft plan was
20 submitted by SUZUKI, Boku, to Commanding General of
21 Kwantung Army for adoption and forwarded to Central
22 Army Authorities and was not KOISO's opinion. T. 32459.

23 Ex. 3380-A. Telegram from Chief of Staff of
24 Kwantung Army to Vice War Minister, 24 January 1934.
25 T. 32,382; Par. LL-27, 28. Reply to an inquiry from

Central Army Headquarters and suggestions were not
1 complied with, T. 32385. Sent in KOISO's name as a
2 matter of routine. T. 32,461.

3 Ex. 3385-A. Organization of War Ministry
4 from 1920 to 1935. T. 32,484; Par. LL-7, 8. Shows
5 control of army budget during this period was under
6 the Chief of the Intendance Bureau and did not come
7 under the Military Affairs Bureau until several years
8 after KOISO left post. Ex. 74 (1942 revision),
9 T. 27,717. KOISO not named therein.

10 Ex. 3457. Five Ministers Conference, 31
11 October 1938. T. 37,345; Par. LL-41. Covers policies
12 to be followed in case China surrenders. KOISO was
13 a civilian at this time following retirement from
14 the Army 29 July 1938. KOISO not named therein. Had
15 nothing to do with forming such policies.
16

17 Ex. 3801-B. HARADA Memoir 8 May 1939.
18 T. 37,813; Par. LL-31. Deals with alleged conversa-
19 tion as to Tripartite Alliance. Document was corrected
20 by Language Board to show KOISO was quoting not his
21 opinion, but the army opinion or solution, and he was
22 asking for the opinion of the Lord Keeper of the Privy
23 Seal. KOISO oposed Tripartite Alliance in HIRANUMA
24 Cabinet and later in YONAI Cabinet which caused its
25 downfall. Corrections %. 38008-9. This is discussed in
~~Section 4 (6) of KOISO summation, Page 66.~~

1 If the Tribunal please, we will now present
2 the summation and argument on behalf of the accused
3 KOISO, Kuniaki.

4 I

5 Charges Against KOISO (LL-35) (T. 41,165)

6 We desire to meet the charges paragraph by
7 paragraph of the prosecution as set out in their summa-
8 tion pages LL-1 to 35, T. 41,164, and to guide the
9 Tribunal to the evidence of the defense which we sub-
10 mit meets each and every issue raised by the Indictment
11 against KOISO.

12 (1) Paragraph LL-1 set out the counts charg-
13 ing KOISO. We wish to submit that Count 44 and Count
14 53 are dropped by the prosecution under paragraph C-18
15 of their summation.

16 (2) We respectfully call the special atten-
17 tion of the Tribunal that a perusal of the Indictment
18 with respect to the accused KOISO reveals that KOISO
19 is not charged in the following counts:

20 Group one: Crimes against Peace: (Counts 19
21 to 25 inclusive; Counts 33 and 35). That is to say,
22 with respect to initiating a war ~~against~~ the Republic
23 of China, the United States of America, the Common-
24 wealth of the Philippines, the British Commonwealth of
25 Nations, the Republic of France, the Kingdom of Thailand,

1 and the Union of the Soviet Socialist Republics, and
2 to waging a war against the Republic of France and
3 the Union of the Soviet Socialist Republics.

4 Group two: Murder; he is not charged in
5 certain counts: (Counts 37 to 43 inclusive; Counts
6 45 to 47 inclusive; and Count 52). That is to say with
7 respect to the common conspiracy, between the 1st June,
8 1940 and the 8th December, 1941, to unlawfully order,
9 cause and permit the armed forces of Japan to attack
10 the United States of America, the Commonwealth of the
11 Philippines, the United Kingdom of Great Britain and
12 North Ireland and all parts of the British Commonwealth
13 of Nations, the Kingdom of the Netherlands and the
14 Kingdom of Thailand and unlawfully kill and murder both
15 members of the armed forces of the said nations and
16 civilians: and with respect to the unlawful killing
17 and murdering by the armed forces of Japan at specified
18 dates or periods at Pearl Harbor, Kota Bahru, Kelantan,
19 Hong Kong, H.M.S. Petrel at Shanghai, the territory of
20 the Commonwealth of the Philippines, Davac, Nanking,
21 Canton, Hankow, in the region of Lake Khasan.

22 (3) We further submit that KOISO is not
23 amenable in any way to the evidence produced against
24 him under any of the remaining counts of the Indictment
25 and that the evidence does not establish guilt beyond

1 a reasonable doubt on any charge against KOISO, for
2 the preponderance of the evidence having probative
3 value clearly indicates he is not guilty of the charges
4 or allegations made by the prosecution.

5 SECTION I RELATED TO COUNT 1 - CONSPIRACY (D-22,24,
6 BB-4, CC-21, HH-1, 2, LL-3-16) (F-94, NN-4, 35)

7 (1) The prosecution, at transcript page 434,
8 state as follows:

9 "The position held by these accused is no bar
10 to their being considered as ordinary criminals and
11 felons if the evidence presented to this Tribunal proves
12 beyond a reasonable doubt, in such case they have been
13 parties to crimes for which they should be punished."

14 Out of the few thousand exhibits adduced by
15 the prosecution during the past two years, how many
16 of them reasonably hold this defendant to be guilty as
17 charged without an iota of doubt? There are none at
18 all as far as the defendant KOISO is concerned.

19 Further, the prosecution at transcript page
20 470, stated as follows:

21 "It may be that if all the facts were now
22 known to us, there are persons not now on trial whom
23 we might have charged in preference to some of the
24 accused. * * * The only question in the case of each
25 one of these accused is whether the case against him

as an individual is proved."

1 In this way the prosecution confesses not
2 only the difficulty it had of selecting the accused,
3 but further acknowledges it filed the Indictment with-
4 out a full and complete investigation. This explains
5 why many charges may be shown to be false or inconsis-
6 tent with the evidence. We find the following prosecu-
7 tion contention at transcript page 470-471:
8

9 "Although we charge that each of these ac-
10 cused was party to the progressive conspiracy alleged
11 in this Indictment and that they were acting in concert
12 to commit the other offences alleged, the evidence
13 will not show that they were a united band who were
14 in agreement with one another, as was the case among
15 the German conspirators. On the contrary, there appear
16 to have been sharp differences of opinion between them
17 and fierce rivalries, upon matters some of which are,
18 and some of which may not be relevant to these charges.
19 The evidence will show, we believe, that they were all
20 agreed in a determination to expand by aggressive war,
21 the power of Japan in every possible direction."
22

23 We submit that it is just as proper to con-
24 clude that although the accused might be united for
25 self-defense or for the purpose of safeguarding Japan
and her people, they were not in agreement with each

1 other with respect to planning a war or for committing
2 any illegal actions. Moreover, there is no concrete
3 evidence adduced to prove that the accused were in
4 agreement to expand the power of Japan in any possible
5 direction.

6 To insist that the accused KOISO is guilty,
7 in spite of the above fact, would make his trial a mere
8 formality.

9 Defendant KOISO has already established that
10 not only did he not plan to expand the power of Japan,
11 but that he also differed with other accused with respect
12 to the propriety of and to the method of executing many
13 national as well as political policies.

14 At transcript page 473, we find the prosecu-
15 tion interpretation of war and responsibility in the
16 following statement:

17 "The responsibility always rests upon human
18 agents, the individuals who have voluntarily sought
19 and achieved by one method or another the power. * * *
20 Since they have voluntarily achieved and assumed this
21 authority, they themselves, * * * , must be brought
22 to individual punishment for their acts."
23

24 We submit it was a practical impossibility
25 in Japan under the old Constitution for an individual
to voluntarily seek a responsible position and achieve

1 authority. Also, it has actually been made clear in
2 the case of KOISO that he was placed in his position
3 as Premier by order of his Emperor under entirely dif-
4 ferent circumstances than the foregoing.

5 In carrying out the duties of that office we
6 must also recall the important point made clear in the
7 German trial when Mr. Justice Jackson in the Nuernberg
8 case contended that the defendants were indicted not
9 because they conducted a war but because they led the
10 country into a war. (Harvard Law Review, July 1947,
11 page 883).

12 As to other positions held by KOISO there has
13 not been any evidence presented to show that he volun-
14 tarily sought and acquired or assumed any authority for
15 illegal purposes or with improper motives.

16 (2) With regard to the March Incident of
17 1931 (D-22, 24, BB-4, CC-21, HH-1, 2 and LL-9-16),
18 KOISO (T. 32,212) was not intimately acquainted with
19 OKAWA (T. 32,209) and was regarded within Army circles
20 as a moderate (para. 269 of Ex. 3340, T. 31,098). Al-
21 though Dr. OKAWA, Shumei and his followers, indignant
22 over the corruption in domestic politics and motivated
23 by dissatisfaction with the SHIDEHAKA policies
24 (T. 15,578) at that time, schemed to carry out an
25 internal reform. If this constituted the beginning

1 of a conspiracy (HH-2), then KOISO was instrumental
2 in putting a stop to it before any attempt was made and
3 prevented the outbreak of an untoward incident (Ex. 157,
4 T. 1,630 was corrected T. 27,517). (KOISO, T. 32,287,
5 32,288, 32,292 and 32,294; UGAKI T. 1,608, 1,626,
6 1,627, 1,630 to 1,631; SHIMIZU T. 1,411, 1,418, 1,447;
7 TOKUGAWA T. 1,445); and HASHIMOTO made clear (T. 28,847)
8 that KOISO's only connection with said incident was
9 to put a stop to it and get back the dummy bombs;
10 HASHIMOTO's previous testimony (T. 28,820) was ambigu-
11 ous until thus clarified (T. 28,847). Moreover,
12 KOISO said he was not one of the conspirators (CC-21)
13 but was one of the persons who helped suppress the
14 conspiracy through Marquis TOKUGAWA, who effected the
15 return to Army custody of the 300 firecrackers which
16 OKAWA had SHIMIZU, Konosuke, procure from HASHIMOTO,
17 a young officer in General Staff Headquarters. (KOISO
18 T. 32,212, 32,293 and 32,296; TOKUGAWA T. 1,446;
19 HASHIMOTO T. 28,807, 28,814, 28,847 and 28,820;
20 SHIMIZU T. 1,406 and 1,407). This incident being
21 a scheme for domestic reform devised by OKAWA only,
22 the assertion of Prosecutor Comyns Carr (T. 16,865)
23 that it was connected with the Manchurian Incident is
24 completely contrary to the facts, as made clear by the
25 testimony of HASHIMOTO, Kingerc (T. 28,820), who

1 admits having been connected with the March Incident
2 (T. 28,794); by the testimony of SHIMIZU, Konosuke,
3 who was OKAWA's co-conspirator (T. 1,410, 1,411 and
4 1,418) and the testimony of Marquis TOKUGAWA, Yoshi-
5 chika, who was on intimate terms with OKAWA (T. 1,446,
6 1,447 and 1,627); and the testimony of KOISO himself
7 (T. 32,209). In this connection we call attention to
8 the fact that the prosecution affidavit of Marquis
9 TOKUGAWA, Yoshichika was apparently not clear to him
10 due to his limited knowledge of English and the possible
11 English interpretation by the prosecution as to the
12 meaning of his affidavit or of the implications of
13 such English words as "abandon" (T. 27,517 and 28,820)
14 and "they" for example (T. 1,441-9). Since the affi-
15 davit was not taken originally in Japanese, but since
16 it had been originally written in English and trans-
17 lated to Japanese, but not read and explained to him
18 in Japanese (T. 1,443), it had the defect of failing
19 to express his thoughts clearly. You will recall that
20 counsel for KOISO tendered for identification exhibit
21 3384 after calling said Marquis TOKUGAWA in the defense
22 phase, since the document had been rejected by the
23 Tribunal for admission in evidence only on the ground
24 that it was repetitious of cross-examination, which
25 the majority may have felt cleared up the erroneous

impression created by the prosecution's affidavit.

1 It is clear from the record the affidavit as intro-
2 duced was under a false certificate due to carelessness
3 of the prosecution.

4 The prosecution's misunderstanding that KOISO
5 was originally a participant in OKAWA's plot arose
6 from an entry in KIDO's Diary of August 1931 (Ex.
7 179-F, T. 1927-28) and from OKAWA's interrogation
8 (Ex. 2177-A, T. 15,582, 15,583). The former is nothing
9 more than hearsay based upon distorted information
10 which KIDO heard from HARADO (T. 31,242) when he vis-
11 ited the latter on 7 August, several months after the
12 so-called incident. HARADA, moreover, had no connec-
13 tion whatever with the March Incident. That he was
14 a man who often passed on distorted rumors was brought
15 out clearly by direct examination of KIDO (T. 31,242).
16 As to OKAWA's interrogation his answer was very ambig-
17 uous and vague as to what he meant by the statement
18 "KOISO gradually came to be involved" (Ex. 2177-A),
19 it was clear that KOISO was not one of those who were
20 unlawfully plotting a "coup de etat" as was shown by
21 the testimony of HASHIMOTO, SHIMIZU, TOKUGAWA, and
22 KOISO to which reference has above been made. The
23 only involvement OKAWA could have meant was the trans-
24 mittal by KOISO of his request to UGAKI for an
25

1 interview and discussion of the plan as there had been
2 no connection between KOISO and OKAWA prior to that
3 (T. 32,209). Moreover, with regard to the statement
4 in the said OKAWA interrogation with reference to
5 KOISO and others, it was OKAWA's scheme, as has been
6 explained, to make it appear as if high officers in
7 the Army were behind the scene as leaders in the plan
8 and backing it. By such means OKAWA sought to give it
9 weight and thereby to lure and capture the minds and
10 hearts of other young officers and adherents as has
11 been proved by HASHIMOTO's testimony (T. 28,807,
12 28,814) to the effect that OKAWA's statement was not
13 true and without basis in fact (T. 28,847). Unfortu-
14 nately OKAWA could not be called as a witness because
15 of his mental condition and such being the case the
16 Tribunal, pursuant to its past ruling as to OKAWA's
17 sanity and on the basis of the evidence in relation to
18 its period of duration should disregard such evidence
19 offered by the prosecution from such source.
20

21 It has been claimed not only in the Indictment
22 but also even among some Japanese themselves that a
23 criminal militaristic clique was in existence. The
24 prosecution also use terms "Japan", "the conspirators",
25 "brigands", "outlaws" and "criminal" without showing
any connection or continuity of action of said unnamed

persons with any accused. As to the word "clique" it was originally defined as a small and exclusive set or coterie of persons or a combination composed of those interested in the same field of work. Rumor mongers also dealt in terms such as clan clique, militaristic clique, financial clique, academic clique and others. Such terms were labels often used to ridicule, belittle or besmear an individual by associating said individual with scandal, unlawful activities or conduct caused by others in the same field of work who have cast suspicion upon the members of their vocation through certain actions. When the interest in the Army gradually was aroused people started to use the term "Gumbatsu" (militaristic clique). This term was a favorite expression of politicians in political fights for casting suspicion on opponents with a military background and was used to ridicule and belittle Army programs and reform. Many purposely abused military and naval officers with whom they disagreed by sarcastically stating they belong to a militaristic clique.

Military officers' activities created interest and jealousy. At the time of the great earthquake in 1923, Japanese Government officials' administrative measures were inadequate. Army officials contributed

greatly in relieving suffering and disorder. Many
1 Japanese praised the efficiency of Army administration
2 and criticized their political leaders' inefficiency,
3 causing jealous comments. When lives and properties
4 of Japanese residents in Manchuria and China were in
5 danger due to bandits, Communists and others imbued
6 with ultranationalistic ideas, while awaiting the
7 result of diplomatic negotiations, the Army came to
8 be of assistance in many ways. These actions won trust
9 and the impression was created and expressed by some
10 that the Army was more effective than any other govern-
11 ment organ; this created suspicion and jealousy and
12 caused name-calling.
13

14 It was charged by some that financial, polit-
15 ical and governmental cliques were utterly corrupt and
16 had produced a chaotic state of affairs. Therefore,
17 when soldiers and young officers worried over the state
18 of national affairs took indiscreet steps and engaged
19 in political activities, they were labeled as a "mili-
20 taristic clique" thereby damaging the prestige of
21 other officers in the Army.
22

23 On the other hand, many such other officers
24 made use of the spare moments out of their military
25 duties to study diligently, day and night, law, econ-
omics and administrative matters, as a consequence of

1 which their efforts and high standard of knowledge
2 won admiration of many individuals. But politicians
3 and other opponents in political, financial and gov-
4 ernmental cliques would often class these men as be-
5 longing to "the military clique" thus besmearing
6 them with actions of the black sheep of their profes-
7 sion.

8 There were some, as is natural to all coun-
9 tries, who were ideological radicals and who possessed
10 special purposes, and for their subversive behind-the-
11 scene activities the term "militaristic clique" could
12 be used to their advantage if it could be superimposed
13 in the limelight. The majority of the young men re-
14 cruited and placed under the direct leadership of
15 young officers of the Army were sons of poor and unfor-
16 tunate farmers of the country, who received deep sym-
17 pathy of sincere young officers as to their home condi-
18 tions. Knowing this, these young men were aroused to
19 advocate internal reform and renovation of the nation
20 by civilian radicals. Such was the case of the so-
21 called March and October 1931 Incidents, which were
22 fortunately prevented before they were carried out, and
23 of the unfortunate May 1932 and February 1936 Incidents,
24 which occurred. These gave unscrupulous politicians
25 more dirt for their label "military clique" and such

1 scandals were used to discredit the military ser-
2 vices in attempts to weaken the confidence of the
3 people in the government in power. Able statesmen
4 in the WAKATSUKI Cabinet understood that these attacks
5 on the government were led by Communists, ideological
6 radicals and irresponsible elements and not by the
7 elder officers in the military services, who were
8 quietly at work putting a stop to the political activ-
9 ities of military personnel and exposing and punishing
10 those responsible for the above incidents.

11 THE PRESIDENT: Very little of this is war-
12 ranted by the evidence, Captain Brooks. But proceed.

13 Mr. BROOKS: These inferences, your Honor,
14 are drawn from the KIDO Diary and HAKADA Memoirs and
15 are general summation evidence. I haven't cited it,
16 but it is already in evidence. And this argument
17 that is following here is evidence which has already
18 been cited previously and it hasn't been repeated. If
19 the first references are read you will find this is sub-
20 stantiated by the citations I have already given.
21
22
23
24
25

1 Military policy was enforced which strictly
2 prohibited officers and soldiers in active service
3 from taking part in politics; such policies were
4 based on the Army's fundamental duties, not being con-
5 sistent with such activity.

6 One of the accused stated from hearsay, based
7 on such rumors, that the March Incident was the
8 beginning of interference in politics by a militaristic
9 clique. Such statements, not based on fact, were made
10 by politicians in government circles, and grew and
11 flourished as a result oftentimes of blind faith in
12 their own observations to each other and in those sup-
13 plied in a superficial way by other ill-advised dealers
14 in hearsay, called political information brokers.
15 Furthermore, advantages were often taken by unscrupulous
16 individuals to slander others through supplying false
17 rumors to people who peddled rumors, and by this
18 means worked their schemes to hide their own incom-
19 petence or lack of faithfulness to their duties.

20
21 Such being the case, that there were a
22 number of Japanese who were nearsighted and mistaken
23 in their views, it is natural in a way for the prosecu-
24 tion who are not too versed in the political affairs
25 of Japan to swallow the bait and use a term such as
"criminal militaristic clique" as a label for condemning

1 men of military training. The term "criminal" or such
2 a label as "military clique" should not be combined
3 or used against the accused, we submit, until the
4 propriety of the term is decided by the fact being
5 established as to whether or not he is guilty of
6 indiscretion and that a common conspiracy to commit
7 illegal actions he led the nation into an aggressive
8 war.

9 As has become clear from the evidence the so-
10 called March Incident was a plan on the part of Dr.
11 OKAWA, Shumei to carry out domestic reform if he
12 could persuade General UGAKI of the Minseito party
13 group to act as a leader of the opposing Seiyukai
14 party group, a plan which ended in failure. OKAWA,
15 as a means of mobilizing his followers to carry out
16 his plan, may have represented himself as having
17 intimate connections with such men as General UGAKI
18 and KOISO and left an impression that he had powerful
19 supporters behind the plan as a means of magnifying
20 his own importance in order to dazzle young and naive
21 followers; however none of such followers' testimony
22 supports such theory that KOISO was one of their
23 number. Moreover, OKAWA created doubt as to his own
24 integrity and credibility by advertising himself as
25 having connections with the so-called October Incident

1 when, as a fact, it is clear from the evidence, that
2 all civilians including OKAWA were excluded from it
3 by the ones involved as they testified in this case.

4 . OKAWA's ideas and statements are as conflicting
5 and incoherent as his actions were eccentric. A meet-
6 ing of minds between OKAWA, the radical reformer,
7 and KOISO, the prudent and careful, as shown by the
8 evidence, was impossible. It was this prudent and
9 careful nature of KOISO's that prompted him to order
10 Colonel NAGATA to study the plan brought by OKAWA so
11 that in reporting the true purport of OKAWA's plan
12 to his superior, War Minister UGAKI, he would be fully
13 prepared to make accurate and critical replies to any
14 inquiries from the Minister.

15 From the time he asked OKAWA for his explan-
16 ation, at this interview KOISO advised abandonment
17 of the March Incident plan. That he was instrumental
18 in recovering the firecrackers which had been given
19 to OKAWA and his followers and endeavored to protect
20 the prestige of the Army from public criticism has
21 been brought out clearly before the Tribunal by the
22 testimony of the witness TOKUGAWA, HASIMOTO and
23 SHIMIZU.

24 If by chance the firecrackers had been left
25 in the hands of OKAWA and his group, some other

1 untoward incident might have been planned in the
2 future. The March Incident was terminated as a result
3 of KOISO's efforts and the firecrackers, although
4 they had no destructive or dangerous power, were
5 restored to their proper place. The diligence of
6 KOISO in this matter should have been praised. How-
7 ever, it seems certain rumors arose because a section
8 of the people who did not know the truth misunderstood
9 KOISO's actions and it took the evidence of those who
10 actually participated in the incident to clear up said
11 rumors and hearsay gossip.

12 It has been stated in the testimony of a
13 prosecution witness that the aim of the March Incident
14 was to bring about the emergence of a cabinet of the
15 Seiyukai party which would effect domestic reforms
16 under the proposed leadership of General UGAKI whom
17 the Chief of Counsel for the prosecution has given
18 the stamp of friend of peace because he was a member
19 of the Minseito party group. To say that the March
20 Incident became the motive force behind a scheme for
21 an armed occupation of Manchuria or that it was a
22 cause which strengthened the Army's voice in politics
23 is a farfetched version fabricated by those who would
24 try to give some semblance of rationality to their
25 allegations about this incident or to cause suspicion

1 on others to cloud their own activities or divert
2 attention from themselves. In examination of the
3 relation between the March Incident and the Manchurian
4 Incident will reveal how unfounded the charges are
5 that there was an unlawful connection between the two.
6 It is clear from KOISO's testimony that when OKAWA
7 visited him to explain the reason for his plan not
8 one word was said about the Manchurian question.
9 Furthermore, both TOKUGAWA and SHIMIZU, who were on
10 intimate terms with OKAWA, testified that the March
11 Incident had nothing to do with the Manchurian question.
12 If we examine the various documents relating to OKAWA,
13 the first time he ever alleged that the motive of the
14 March Incident was because of the Manchurian question
15 was when he was examined in connection with the May
16 15th Incident which occurred in 1932 several months
17 after the outbreak of the Manchurian Incident (OKAWA's
18 interrogation, Ex. 2177-A). There were none among
19 those that testified, who stated they were informed
20 about any such motive for the March Incident plan at
21 the time or who ever testified they heard from OKAWA
22 that the plan was related to the Manchurian question.
23 We submit from this fact that OKAWA tried to create
24 an impression and utilized the Manchurian Incident
25 and the rumors afloat thereabout, to bolster the

1 importance and the value of his past activities to
2 try and escape punishment under the law.

3 With regard to the observation that the
4 March Incident was a cause intended to strengthen
5 the Army's voice in politics, meaning we assume the
6 alleged criminal militaristic clique, it is clear
7 that this is a deliberately distorted version of the
8 circumstances, as seen from the evidence as we have
9 reviewed it above. The March Incident had nothing to
10 do even to the lightest degree with the Manchurian
11 question nor with the strengthening of the political
12 influence of the Army. It was a scheme, which the
13 evidence shows, originated in the mind of Dr. OKAWA
14 out of his personal desire to rescue Japan from the
15 throes of corruption in domestic politics.

16 Even though we assumed it to be a means of
17 expressing sincere motives, the scheme of action
18 which this plan harbored was shown to be reckless
19 and irrational. Fortunately by KOISO's efforts, those
20 who were involved were made to abandon the plan and
21 the execution thereof; unknowing young officers who
22 perhaps ignorant of the real nature of the plan, were
23 being lured toward improper participation by OKAWA,
24 were saved from disgrace and the honor and prestige
25 of the Army were protected. Because KOISO's action

1 was not publicized various suspicion cropped up,
2 supplying the so-called information peddlers with
3 rumors to spread.

4 KOISO's recommendation for premier by senior
5 statesmen was after careful discussion as to his
6 character and background and confirms other evidence
7 that he had no connection with those who were accused
8 and later tried for improper conduct.

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a~~Paragraph LL-2 of the prosecution summation~~

1 deals mostly with the activities of OKAWA and others.
2 There is no evidence that KOISO was interested in OKAWA
3 or his plans or assisted him in any way and the evi-
4 dence shows that KOISO was not aligned with OKAWA.
5 The testimony of those involved in the March Incident
6 shows KOISO took steps in line with his administrative
7 duty as a personnel officer in the War Ministry to
8 investigate the activities of OKAWA and the young
9 officers in the Army General Staff which explains his
10 study of the consistency of the plan, and his actions
11 were deliberate once he gained knowledge as to its
12 contents to present its various aspects to the War
13 Minister with his criticism of its reckless nature.
14 Thereafter he put a stop to OKAWA and the young offi-
15 cers' activity in accordance with orders from and in
16 line with the policy of the War Ministry that active
17 army officers and soldiers should not participate in
18 political movements. KOISO's reports to the War
19 Minister on the activities of these young officers and
20 OKAWA finally led in a later incident to disciplinary
21 action against the young officers, and OKAWA, later,
22 was sentenced and served five years' imprisonment as
23 a result of his continuation of action against public
24 order. Though KOISO's steps were deliberate and he
25

1 took a serious view of the question as affecting army
2 prestige, he persisted in his efforts to remove all
3 danger from the dummy bombs being later used improperly
4 (T. 28,814). Therefore this must have special signi-
5 ficance in establishing that there was no conspiracy
6 on the part of KOISO with OKAWA.

7 (3) The prosecution contend that the defendant
8 KOISO was connected with the so-called 1931 October
9 Incident. That this was not so has been proved by the
10 testimony of KOISO himself (T. 32,213 and 32,214) and
11 the testimony of HASHIMOTO, Kingoro, who was directly
12 involved in the incident (T. 28,815).

13 (4) KOISO's activities prior to the Manchu-
14 rian Incident (LL3, 4, 26, F94). The prosecution in
15 their summation contend that KOISO was interested in
16 the Kokuhonsha Society, but KOISO stated he only
17 attended one meeting and that he was never a director
18 or officer of the society (T. 32,273). He said he paid
19 the membership fee which was necessary in order to
20 subscribe to the magazine (T. 32,276), "The Kokuhon,"
21 published by the society, which had many articles by
22 leading statesmen on matters of current interest
23 (T. 32,275).

24 If exhibit 164 in the Japanese is examined
25 carefully, it will show that he was mentioned only as

one of the members and was not a director. All
1 societies listed put the official title over the column
2 in which is listed the persons named and where there
3 are more than one column of officers or directors the
4 additional columns are shown by an indication "u" which
5 means "ditto" being placed over such columns. In
6 exhibit 164 there are only 5 directors designated and
7 KOISO's name appears in a different column from that
8 of the directors and is listed with the remaining 28
9 members whose names appear in several columns, none
10 of which are designated by any title of director or
11 other title than that at the head of these columns of
12 "members." KOISO testified that while he was a regi-
13 mental commander stationed at Tsu, Japan, he wanted
14 to read this magazine called the "Kokuhon" (T.32,276)
15 and that was the only reason why he became a member of
16 that society and paid a membership fee. As to the
17 nature of the "Kokuhonsha" he said "nobody explained
18 to me the real character or nature of the 'Kokuhonsha'
19 but from what I have read in the magazine the 'Kokuhon,'
20 published by this organization, my understanding was
21 that the purpose of this organization was to make the
22 nature and spirit of Japan known better to its members"
23 (T. 32,275). KOISO denied that it was his understanding
24 that the organization hoped to accomplish its aims by
25

taking political measures (T. 32,276).

1 We submit that regardless of the purpose of
2 this society before or after KOISO joined it, that
3 he only attended one meeting and took no part in its
4 activity at any time other than that, so no responsibi-
5 lity should rest on him from merely reading its
6 magazine.

7
8 (5) The evidence relating to the Seiyukai
9 party (D24, Ex. 2177-A, T. 15,580) does not indicate
10 KOISO ever was a member. Also UGAKI and the HAMAGUCHI
11 Cabinet were members of the Minseito party which opposed
12 the Seiyukai party and its positive policy, so it is
13 weird to state UGAKI was to become president of this
14 opposing party and this was a hallucination of OKAWA
15 that UGAKI of an opposing party would take or be
16 trusted to act as president. KOISO, when questioned,
17 denied any knowledge or membership in the organization.
18 Paragraph LL-5 sums up KOISO as being more than a
19 military man under orders of his superiors. We believe
20 the evidence refutes this as well as the conclusion of
21 the prosecution that KOISO was a supporter of persons
22 and movements having as their design forceful measures
23 for the expansion of Japan by war if necessary. Fur-
24 thermore, if KOISO had been connected with these inci-
25 dents he would have been summoned before a trial

1 either as a witness or an accused but he was not sum-
2 moned, which further indicates OKAWA's statements to
3 be false.

4 (6) To a question from the prosecutor whether
5 Director of the Military Affairs Bureau KOISO had not
6 severely criticized him, MINAMI replied "That is not
7 in my recollection at all." (T. 19,827) Thus the
8 hearsay evidence written in the memoirs of HARADA
9 (Ex. 3756-A, T. 37,570) have no probative value and
10 are refuted. This document was introduced to create
11 the impression that KOISO and the Director of the Inten-
12 dance Bureau were opposed to the army reorganization
13 question, but if the paragraph immediately following
14 said excerpt is read it shows KOISO only opposed the
15 proposal to postpone the time for commencement of the
16 reorganization plan.

17 (7) The foregoing proof and explanations we
18 submit show defendant KOISO is not amenable in any way
19 to the evidence produced against him under count 1 of
20 the Indictment.
21

22 (8) With regard to NN-4.

23 In 1931 KOISO was, as Director of the Military
24 Affairs Bureau, one of the War Minister's administrative
25 assistants. In that position he offered suggestions
and advice to War Minister MINAMI as to the question

1 of how to carry forward completely and smoothly the
2 policies of the WAKATSUKI Cabinet based upon the
3 principles of the SHIDEHARA diplomacy. That he did
4 not participate in any common conspiracy of aggression
5 against Manchuria is clear from KOISO's own testimony
6 in which he said, "In view of the situation at home
7 and abroad -- I do not remember the exact date -- I
8 presented my view to the War Minister and the Vice-
9 Minister on how to avoid war, by adhering to the policy
10 of patience and forbearance in the face of any develop-
11 ments of the situation in China, especially in the
12 Manchurian area." (KOISO, T. 32,207.) Furthermore,
13 MINAMI also testified, "I had a thorough understanding
14 of its (Minseito party cabinet) policies." (MINAMI,
15 Tr. 19,777.)

16 (9) With regard to NN-35.

17 The prosecution's evidence does not show any
18 conspiracy between MINAMI and KOISO to secure Japan's
19 domination anywhere.

20 Since becoming Director of the Military Affairs
21 Bureau in August 1930, KOISO did no more than to carry
22 out faithfully the duties of his office in accordance
23 with superior orders as administrative advisory organ
24 to his superior, the War Minister, as has been des-
25 cribed. In that position he suppressed the March

1 Incident before it occurred (HASHIMOTO, T. 28,847); he
2 advised avoidance of any conflict with China by exer-
3 cising patience and forbearance under all circumstances
4 (KOISO, T. 32,207); and when the Manchurian Incident
5 broke out he acted in accordance with the policy of
6 non-expansion as laid down by the government (KOISO,
7 T. 32,207, Ex. 3421-A, T. 32,827). These facts are
8 clear from the evidence. Moreover, with regard to the
9 dispatch to Manchuria of Major General TATEKAWA whom
10 the prosecution view as an advocate of expansion, the
11 evidence clearly shows that KOISO had no connection
12 therewith. (MINAMI, T. 19,821; KAWABE, T. 19,433,
13 ISHIHARA, T. 22,208; and KOISO, T. 32,309.)

14 (10) With regard to the prosecution summation,
15 para. F-90:

16 The prosecution contend that "The witness OGATA,
17 President of the Information Board in 1944 under Premier
18 KOISO, testified that while freedom of the press was
19 always limited in Japan, censorship became particularly
20 noticeable immediately preceding the Manchurian Inci-
21 dent, when newspapers were required to submit copy to
22 the Home Ministry for censorship." However, this
23 witness later testified (T. 1150-1152) that censorship
24 had existed for a long time prior to the Manchurian
25 Incident and refutes the previous statement about

1 censorship becoming particularly noticeable immediately
2 preceding the incident.

3 (11) Paragraph LL6 shows KOISO as an infantry
4 officer become a major general in December 1926; there-
5 fore he could not be one of the members of any young
6 officers' group or one who would expect advancement
7 in rank because of activities in any group.

8 From August 1930 to February 1932 he held the
9 administrative position of Chief of the Military
10 Affairs Bureau of the War Ministry in charge of the
11 sections set out in paragraph LL7. It should be
12 pointed out that at this period the budget control was
13 not included and did not become a function of the
14 Military Affairs Bureau until years later.

15 Paragraph LL8 is misleading. TATEKAWA was
16 not linked to KOISO as a plotter of the March Incident
17 as alleged. It was made clear by a number of witnesses
18 and documents as well as by HASHIMOTO on cross-examination
19 that KOISO put a stop to the activities of the young
20 officers of the General Staff. Furthermore, if KOISO
21 was conspiring with others to cause trouble in Mukden,
22 why would KOISO broach the need for action by the
23 central authorities to stop impulsive movements by
24 the Kwantung Army and why would KOISO advise and assist
25 MINAMI, the War Minister, in sending letters and

1 telegrams to the Kwantung Army to carry out the
2 SHIDEHARA policy of the cabinet of non-expansion and
3 localization of the trouble and why did they confer
4 with the General Staff to make the army comply with
5 government policy and their instructive advice?

6 The prosecution by discussing the alleged opi-
7 nions of TATEKAWA and OKAWA try again to smear KOISO
8 or to put a square peg in a round hole by getting the
9 Tribunal to make KOISO responsible for the opinions
10 of someone just because he came briefly in contact with
11 them in carrying out his duties.

12 (12) In paragraph LL-9 we find the March
13 Incident discussed as though it had actually taken place.
14 When we examine the participation of KOISO we find it
15 was as an administrative officer of the War Ministry
16 investigating the activity of military personnel of
17 the Army General Staff and prohibiting these young
18 officers from violating the policy against participation
19 of officers or soldiers on active duty in movements of
20 political nature.

21 We find further that the OKAWA request for use
22 of government troops was studied for consistency but
23 that when it was made clear they were not to be used
24 or desired merely to parade and march in a peaceful
25 demonstration the plan was declared to be reckless

and KOISO was ordered to put a stop to the activities
1 of these people which he did, thus ending the incident.

2
3 The prosecution tried to lead this court to
4 believe that the Diet Building was to be blown up with
5 "bombs" and made much of the 300 "bombs" to be used to
6 seize control of the government. The development that
7 there was a mistake in translation and interpretation
8 of the word "firecracker" or "fireworks" for "bomb"
9 threw a different light on the wild claims of the
10 prosecution. Whether this mass demonstration called
11 the March Incident was planned to attract the attention
12 of the government to the need for certain changes or
13 not it never was carried out, so what significance does
14 it have? What happened to OKAWA later? Would you
15 expect to find one of the alleged conspirators, OKAWA,
16 serving five years in prison during such a period of
17 time of alleged conspiracy? Would you expect to find
18 KOISO and MINAMI, two of the accused, bringing about
19 the sentencing of other accused with whom they are
20 charged with conspiring? This does not make the right
21 pattern for finding KOISO guilty of such charges as
22 alleged.
23

24 (13) Paragraph LL-10 is easily understood if
25 we consider that troops were being asked for to parti-
cipate in a political demonstration, Naturally one

1 would examine to find out what was desired in order
2 to consider what basis there could be for either approv-
3 ing or rejecting the request. Troops are often used
4 in parades, etc., not only on festive occasions but
5 for political demonstrations, and when KOISO found out
6 the nature of the OKAWA plan, he classed it as reck-
7 less and being an improper request for the use of
8 troops, it was refused, and on finding out that some
9 young General Staff officers were participating, KOISO
10 took proper steps to curb and restrain such prohibited
11 conduct as being detrimental to army prestige and
12 policy by calling it to the attention of their proper
13 superior officers and carrying out orders to put a
14 stop to the activities of such officers and civilians.

15 Paragraph LL-11 states the cancelled March
16 Incident plan was motivated by a desire to solve the
17 Manchurian problem and accomplish Japan's overseas
18 development by setting up a new political power. What
19 Manchurian problem does the prosecution mean? The
20 Manchurian Incident had not happened as this was March
21 1931. True there had been over 300 incidents of
22 serious consequence involving the loss of life and
23 property of many Japanese and Korean residents in Man-
24 churia and China proper but the evidence shows these
25 were being handled through diplomatic negotiations of

1 the Foreign Office. Furthermore, the evidence of the
2 defense shows that at this time there were many poli-
3 tical parties in Japan dissatisfied with internal con-
4 ditions, corrupt political practices, etc., so we feel
5 their conclusion here is not well based and that this
6 incident had no significance in relation to the charges
7 against the accused. KOISO should know as he inves-
8 tigated it and put a stop to its plans and if it had
9 such significance as the prosecution wish to infer it
10 would be to KOISO's credit to point out that as KOISO
11 was active in putting an end thereto he must be found
12 not guilty of being one of the alleged conspirators.

13 As to paragraph LL-12 we believe mistranslations
14 account for these erroneous impressions as they are not
15 sustained by later actions of the accused nor by the
16 preponderance of the evidence which shows KOISO was not
17 involved in said plan.

18 Paragraph LL-13 is easily understood when we
19 see KOISO's position in the War Ministry was connected
20 with personnel matters and it was his duty to protect
21 army prestige by acting as he did in advising those
22 concerned in the Army General Staff and preventing
23 embarrassment to the War Ministry as a section of the
24 government's cabinet.
25

Furthermore, HASHIMOTO admitted that he was

1 the one that furnished the 300 so-called "bombs" held
2 by SHIMIZU and OKAWA, and that KOISO had no connection
3 with it. The prosecution tried to prove KOISO con-
4 nected with this as a result of mistaken translations
5 such as the evidence of Marquis TAKUGAWA whose English
6 affidavit was introduced under a false certificate from
7 the interpreter as is clear from the record and which
8 when explained to him in Japanese does not express him
9 correctly at all as the English affidavit was not cor-
10 rect as shown by other evidence as well as by the cross-
11 examination of TOKUGAWA himself.

12 KOISO had no military authority to seize such
13 alleged bombs and besides it was more discreet to
14 handle such matters quietly to protect army prestige
15 since involved were military as well as civilian
16 personnel who had taken no action in carrying out
17 such political demonstration.

18 Any reason the deceased MUTO may have had for
19 failing to act to recover the alleged bombs may or may
20 not be material but if he was one of the accused in
21 the dock guilty of the prosecution's charges his actions
22 in failing to prevent such a plot and require return
23 of the fireworks might be significant of his being a
24 party approving thereof. Therefore, the action of the
25 accused KOISO ending such a plot as alleged by the

1 prosecution does not follow a pattern indicative of
2 guilt or improper motives but was in line with his
3 official duty to protect army prestige by preventing
4 such political connivance by military' men.
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1 Paragraph LL-14 relies on rumors and OKAWA's
2 statements to fix KOISO's participation in the March
3 Incident. We do not know whether OKAWA's statements
4 were based on his desires or his dreams becoming so
5 mixed between hallucination and fact that he made such
6 statements or whether he was trying to create an
7 impression that Government officials were involved so
8 the Law Enforcement authorities might be persuaded they
9 should not go any deeper into his activities. How-
10 ever we know all such statements and rumors have been
11 declared false by the preponderance of the evidence
12 and that HASHIMOTO and others clear KOISO of any
13 illegal participation in said incidents. Furthermore,
14 OKAWA was sentenced to 5 years' imprisonment and there
15 is no record against KOISO in connection with any of
16 such incidents. If OKAWA's statements were made they
17 were surely investigated by the police and many people
18 were punished as a result but KOISO's actions were not
19 questioned. Furthermore, KOISO and MINAMI were the
20 ones active in bringing about such investigations and
21 punishment of illegal activities of such political
22 groups. HASHIMOTO never said KOISO planned any inci-
23 dent. He named those who participated in it and in-
24 cluded legal as well as illegal participation as was
25 pointed out in his cross-examination.

Paragraph LL-15 does not arrive at a logical conclusion for the preponderance of the evidence shows beyond any reasonable doubt that KOISO was not a conspirator in the plots and KOISO testified the plan was reckless, and NAGATA, after studying it, apparently could find nothing consistent with legal political movements such as troops might be used in to parade or participate in a proper political rally; therefore, when it was presented to UGAKI who was the one to make any decision that was called for, it was turned down as KOISO had predicted it would be when he was first approached by OKAWA to request an interview with UGAKI about it. Therefore, KOISO's condemnation of the plan then and now has been shown to be consistent with his actions in carrying out his orders to put a stop to these activities on the part of such young officers.

Paragraph LL-16 shows that the prosecution lack understanding of the duties of KOISO in the War Ministry for his attitude was in line with the action he took to see that the plan was not put into execution and he was interested enough in insuring this as well as in protecting army prestige to persist until the so-called "bombs" were removed from the hands of those who might use them at a later date which might cause

1 reflection on the thoroughness of his carrying out
2 his orders to see that the demonstrators did not carry
3 out their plans.

4 We state again that the plan as outlined by
5 the evidence does not show any connection with the
6 Manchurian Incident. Since the Manchurian Incident
7 happened on September 18, 1931, how could this have
8 been "the first step toward solving the Manchurian
9 Incident" as this plan was terminated due to the
10 efforts of KOISO and others in March 1931, six months
11 before the Manchurian Incident arose and the next
12 political incident by OKAWA and others did not appear
13 until some time after the Manchurian Incident, and it
14 also was nipped in the bud as a result of the vigi-
15 lance of KOISO and others in the War Ministry.

16 The prosecution has merely been trying to
17 prove their theory by stating this happened, and these
18 things happened; so they ask you to assume they were
19 connected activities of a group planning an aggressive
20 war against the prosecuting nations. The evidence we
21 believe shows this theory is not even reasonable when
22 we examine the facts in evidence refuting such conten-
23 tions.
24
25

SECTION 2 -- RELATING TO COUNTS 2, 6, 18,
1 27 -- MANCHURIA (LL-17 to 26).

2 (1) In his opening statement on the Manchurian
3 Incident Prosecutor Darsey (T. 1678 and 1690) in
4 specifying the defendants alleged to have been con-
5 nected with this incident, omitted KOISO's name from
6 the list and made no reference to him.

7 The prosecutors have contended, without
8 regard to dates, that the Director of the Military
9 Affairs Bureau was responsible for the army's budget
10 and that KOISO as an occupant of that post was re-
11 sponsible for the dispatch of troops to Manchuria
12 (TANAKA, T. 15859 - 15860), and Conyns-Carr, T.
13 16865). During that period of time that KOISO was
14 Director of the Military Affairs Bureau, "matters
15 concerning the supervision of the general budget"
16 were not one of the functions of his bureau, but as
17 stipulated in the organizational regulation of the
18 War Ministry, such was the responsibility of the
19 Director of the Intendance Bureau, together with other
20 matters relating to the army's budget. KOISO testified
21 on this point (Ex. 3375, T. 32222; Ex. 3385, T.32485)
22 and the matter has been fully clarified by the excerpt
23 from the organizational regulations of the War Ministry
24 (Ex. 3385, T. 32484) and the reply of the witness
25

1 NISHIURA, Susuru, when examined by counsel for KOISO
2 (T. 27717). The prosecution's contentions are there-
3 fore wrong, because such responsibility did not become
4 one of the duties of said office of the Military Affairs
5 Bureau until several years after the period in ques-
6 tion, when laws were revised and the change in
7 responsibility made.

8 The prosecution, in their summation (para.
9 LL-8) states: "Matters concerning General Staff
10 headquarters were under KOISO's jurisdiction as well
11 as matters regarding normal army organization, includ-
12 ing peace and wartime organizations." This is mislead-
13 ing for a Chief of a Bureau in the Ministry of War can-
14 not interfere with matters under the jurisdiction of
15 the Army General Staff Office. (Article 11, Organiza-
16 tion of War Ministry (Ex. 3385-A). When Article 11
17 is read in its proper context it means he conducts
18 liaison on matters relating to negotiation between the
19 War Ministry and the General Staff Headquarters.

21 The Military Affairs Bureau of the War
22 Ministry is not in a position to control matters
23 relating to the Army General Staff Headquarters.
24 (Horwitz, T. 667) (Nolan, T. 585). Even the War
25 Minister who controls and is responsible for the

actions of the Chief of Military Affairs Bureau has

no control over the General Staff.

1
2 The dispatch of the Chief of the First
3 Division TATEKAWA to Manchuria was not based upon
4 recommendation of KOISO. (MINAMI, T. 19825; KAWABE,
5 T. 19433; ISHIHARA, T. 22218; KOISO, T. 32309). The
6 prosecution in their summation (LL-17d) is wrong in
7 stating that KOISO expected the outbreak of the
8 Manchurian Incident or that he requested the dispatch
9 of General TATEKAWA. This was pure speculation and
10 conclusion on the part of the prosecution. KOISO
11 himself testified and he was supported by the other
12 witnesses that there was no such fact at all.

13 The investigation and activities to be in-
14 vestigated concerned operational matters which were
15 exclusively under the jurisdiction of the General
16 Headquarters. The War Ministry would not be consulted
17 where a member of the General Staff was to be sent out
18 on an inspection trip on behalf of its own business.
19 This explains why some witnesses were perplexed by
20 questions on such a matter and replied, "This is not
21 possible" (ISHIHARA, T. 22218); (KAWABE, T. 19433) and
22 "KOISO had no authority to do so." (T. 19821 and
23 32207).
24

25 (2) The document on the study of the organi-
zation of the military police in Manchuria sent by

1 MP Commander MINO to the War Minister dated 25 July
2 1931 (Ex. 3376, T. 32302) relates also to a period
3 when KOISO was Director of the Military Affairs Bureau,
4 a matter not within his authority to decide. The docu-
5 ment does not bear KOISO's signature or his seal, in-
6 dicating that he had read it, and he himself testified
7 that he had never examined it (KOISO 32444). Further-
8 more, the defense offered supplementary evidence
9 (Ex. 3383, T. 32448-51) and has shown that the contents
10 of the document in question was only the personal
11 desire of the Kempei commander to increase the strength
12 of the military police over a period of fourteen years
13 to a total of approximately 5000, and had no prospect
14 of realization. (KOISO, T. 32453).

15 (3) The prosecution in their summation
16 (para. LL-21, para. LL-22) discuss the document
17 "Plans for the Temporary System Now Being Carried Out
18 in the Policy Toward Manchuria and Mongolia." However
19 it does not bear any signature or seal indicating that
20 KOISO ever read it and he did not recall it. (T.32335)
21 (T. 32337) TT. 32453).

22 The prosecution's allegation is erroneous
23 that the advisory body mentioned under Item II (Ex.
24 3377-A) is the same as the advisory department to which
25 TADA belonged. TADA was advisor of the Department of

1 Military Administration of Manchoukuo (War Ministry)
2 and his function was entirely different from that
3 mentioned in this rough draft. TADA's report had
4 nothing to do with KOISO who by that time had left
5 the service (T. 32349). We submit it was nothing more
6 than a document pigeonholed by a subsection of the
7 Military Affairs Bureau and that KOISO, as Director
8 of said Bureau cannot be said to have had any relation
9 to it. Nor does the evidence show such a plan was
10 ever approved or put into effect (T. 32334). This
11 is further discussed in (11) below.

12 (4) The prosecution introduced into evidence
13 a newspaper story showing that KOISO attended a
14 reception given on 30 June 1931 by War Minister MINAMI
15 for officials of the South Manchurian Railway Company
16 (Ex. 2202, T. 15752; T. 18846). That this affair was
17 not a conference to discuss Manchurian-Mongolian
18 problems but a purely social function has been proved
19 by the testimony of defendants KOISO (T. 32215, 32216),
20 and MINAMI (T. 19810, 19811) and of the witness SOGO,
21 Shinji (Ex. 3415, T. 32808). In relation to the two
22 conferences reported, see para. NN-5 and page 42 of
23 DD 3071 (Manchurian Summation, Sec. F, Part II, 2).
24

25 (In the prosecution summation (D-20) they
contend that the War Minister invited these officials

1 of the South Manchurian Railway to dinner and dis-
2 cussed with them Manchurian-Mongolian problems and
3 that KOISO was at this party; however, this was a
4 mere social dinner party and no Manchurian-Mongolian
5 political problems were discussed. How can the
6 prosecution contend, after we study the men named as
7 being present at this party, that the War Ministry
8 favored military action in Manchuria? (T. 15753,
9 T. 31705, T. 32809)).

10 The evidence has established the fact that
11 War Minister HINAMI and other officials of the War
12 Ministry did everything in their power following the
13 said party to prevent unfortunate incidents in Man-
14 churia. (KOISO, T. 32207; TOYAMA, Ex. 3416, T. 32811;
15 Ex. 3422-F, G and H, T. 32840; Ex. 3425, T. 32842).

16 (5) Certain documents were offered by the
17 prosecution in anticipation that they may have signifi-
18 cance (T. 15807) but they apparently are not relied
19 upon since they are not mentioned nor appear in their
20 summation. Among these documents we will discuss
21 only those bearing the name of KOISO, Kuniaki.
22 (Ex. 2210, T. 15809; Ex. 2211, T. 15810).

23
24 It was a customary procedure for documents
25 coming and going between the War Minister and Army
Commanders to be handled in the name of the Vice-

1 Minister, and Chief of Staff of said Army Commanders,
2 respectively, as to matters of administration of
3 relative unimportance. This has been clearly shown
4 by the testimony of the witness SHIBAYAMA (T. 31805);
5 KAWAHARA (Ex. 3364, T. 31755, 31756) and MIKI (Ex.
6 3357, T. 31717, 31718). Such documents are not
7 evidence of KOISO's having had any more than an ad-
8 ministrative and supervisory function in relation
9 thereto. The use of such special funds, with which
10 these documents are related, has already been clari-
11 fied in KOISO's testimony (Ex. 3375, T. 32223). The
12 statement of the Tribunal's President (T. 15806) is
13 a clear answer to all of said related documents that
14 they have no significance as such expenses of an army
15 are natural.

16 (6) With regard to the Dairen Maritime Customs
17 wire sent by the Chief of Staff of the Kwantung Army to
18 Vice-Minister of War KOISO, dated 4 June 1932 (Ex. 227,
19 T. 2837) (Para. AI-20):

20 This document addressed to KOISO, Kuniaki,
21 as Vice-Minister of War, as stated in the foregoing
22 paragraph (5) was in accordance with the customary
23 administrative procedure. Personal responsibility
24 ended once he placed it before the War Minister ARAKI
25 for proper action. (T. 32223). ARAKI did not take any

1 action thereof, it seems, because relations with
2 third powers were especially delicate at the time and
3 the question of customs was still under study by the
4 government and during KOISO's time did not materialize
5 (KOISO, Ex. 3375, T. 32223) and the evidence does not
6 show what happened as to the following government's
7 action thereon.

8 (7) With regard to the special funds sent
9 to KOISO as Chief of Staff of the Kwantung Army by
10 the War Ministry (Ex. 2213, T. 15811):

11 The Honorable President of the Tribunal
12 has noted (T. 15806) it is only natural that a
13 necessary amount of special funds are required where
14 armed forces operate and it is taken for granted that
15 such funds were not received personally. The funds
16 were transferred as a matter of fact to the Commander-
17 in-Chief and the Chief of Staff KOISO no more than
18 took receipt of them as a matter of administrative
19 formality, as was explained. (T. 31756, 31757; KOISO,
20 T. 32462). As to the nature of the special fund
21 (T. 15805) it was a fund of which no report was re-
22 quired. Its accounting was under the charge of the
23 Senior Adjutant and Intendance Officer under the
24 Deputy Chief of Staff, who gave directions according
25 to the orders of the Commander-in-Chief. The Chief

1 of Staff, KOISO, merely gave supervision as testified
2 to by him (T. 32224) and by the witness HIYOSHI,
3 Takehiko, who was the Intendance OFFICER at the time.
4 (Ex. 3386, T. 32491). The special fund was used as
5 shown by the testimony of HIYOSHI, Takehiko (T.32490)
6 and of KOISO (T. 32224), to cover expenses of the
7 official residence of the Commander-in-Chief and
8 the various departments of the Kwantung Army Head-
9 quarters, and for allocation to the various divisions,
10 independent brigades and other units of the Kwantung
11 Army. The testimony of KOISO (T. 32225) shows there
12 was a rigid arrangement of accounting of the fund
13 so that no personal profit could be derived, and this
14 insured its use only for officially authorized purposes
15 as directed by the Commander-in-Chief.
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1 (8) In November, 1932, KOISO as Chief of Staff
2 of the Kwantung Army sent a document to Vice-Minister of
3 War YANAGAWA entitled "Outline for the Guidance of Man-
4 chukuo." (Ex. 230, T. 2903.) (AA-12) (para. AA-24 and
5 D-70.) As explained in detail by KOISO (T. 32,230) this
6 document was a reply by way of giving the views of the
7 Commander-in-Chief of the Kwantung Army on suggested pro-
8 cedure summing up from authorities on the spot material
9 in reply to a work draft forwarded by the Second Division
10 of the Army General Staff Headquarters in the original,
11 and was in accordance with customary procedure sent in
12 the name of the Chief of Staff to the Vice-Minister of
13 War. (IWAKURA, T. 32,507-8.) It did not represent
14 KOISO's opinions, as admitted by prosecution at par.
15 D-70 (T. 39,158) nor was he in any position of command
16 which authorized him, as set forth in par. LL-27, to
17 decide on such a matter. (KAWAHARA, Ex. 3364, T. 31,756;
18 Regulations Kwantung Army, Ex. 2415, T. 19,557.) More-
19 over, this was only a reference draft and was not approved
20 or put into practice as is clear from the prosecution's
21 own evidence (Ex. 233, T. 2925) that the Japanese
22 Government's views were separately adopted nine months
23 later.
24
25

(9) The "Draft of Outline of General Measures
Regarding Customs Duties in Manchuria," sent by KOISO to

the Vice-Minister of War in December, 1932, (para.
1 LL-27) (Ex. 3379-A, T. 32,377) also falls under the same
2 category as the previous document which we have referred
3 to. Responsibility for the contents belonged to General
4 MUTO, Nobuyoshi, the then Commander-in-Chief (KAWAHARA,
5 T. 31,756, 31,757) and KOISO was only administratively
6 connected with the document by virtue of his position as
7 Chief of Staff (KOISO, T. 32,459.)
8

9 (10) The document "Views Concerning the Organic
10 Law of the Government of Manchukuo"(para. LL-27 (c)) sent
11 by KOISO, Chief of Staff of the Kwantung Army, to the
12 Vice-Minister of War in January, 1934 (Ex. 3380, T. 32,384
13 is also, like those just referred to in (8) and (9) above
14 not the personal view of KOISO, but the views of the
15 Commander-in-Chief sent in the name of his Chief of Staff
16 to the Vice-Minister of War (KOISO, T. 32,230.) Attention
17 is especially called to KOISO's testimony that his
18 personal views on the question differed from those of the
19 Commander-in-Chief (T. 32,384 and 32,385.) KOISO stated
20 on cross-examination on this document it was the reply
21 of the Commander-in-Chief on the spot to a request for
22 views from the Army authorities at home (32,265) and it
23 is wrong to conclude that KOISO had any responsibility
24 therefor.
25

(11) The document "Report on the Guidance of the

1 Manchukuo Army Administration" (LL-27) (LL-21) sent by
2 Major General TADA to General HISHIKARI, Commander-in-
3 Chief of the Kwantung Army, dated 4 August 1934 (Ex.
4 3378-A, T. 32,357) was prepared long after KOISO left
5 the Kwantung Army (Ex. 114). It does not bear KOISO's
6 signature or any seal indicating that he had read it,
7 nor has the document relevance to him. Moreover, the
8 contents relate to the "gunsei" (which is also the term
9 for "military administration") of Manchukuo. What this
10 term describes is not military administration of Manchu-
11 kuo by Japan, but of policies for guidance of the depart-
12 ment of the Army of Manchukuo, which was the name "gunsei
13 for its War Ministry. This document is a report by Major
14 General TADA who was an advisor of this department showing
15 his policies for assisting and advising it. He was making
16 apparently special effort to gain recognition of the
17 results achieved by the advisory department and has ex-
18 pressed quite at length his wishes concerning that depart-
19 ment for the future, which accounts for considerable
20 exaggeration in the report. Although this document con-
21 tains a historial account of the development of the
22 department of the Manchukuo Army, nothing can be found
23 placing responsibility in any way on KOISO.
24

25 (12) With regard to the conferment of decorations (Ex. 114, T. 734 and 16,865) KOISO was conferred

1 of grade below Class B, the Order of the Golden Kite, and
2 the Grand Cordon of the Rising Sun on 29 April 1934, as
3 were 300,000 other Government officials and Army and Navy
4 officers who occupied official position in the Japanese
5 Government during the time of the Manchurian Incident.
6 These decorations were not rewards for committing unlaw-
7 ful acts but a customary courtesy to officials. The
8 decoration, the Order of the Rising Sun was of a grade
9 equivalent to a previous one and the Order of the Golden
10 Kite was one grade higher than a previous one, both of
11 which former decorations had been awarded many years ago
12 in a similar courtesy gesture.

13 (13) We submit the prosecution (para. NF-4)
14 surmation does not take into account that during KOISO's
15 period in office during the time of the Manchurian Inci-
16 dent that he merely carried out the duties of his office
17 solely pursuant to the orders of his superiors. His
18 capacity was that of an administrative assistant and he
19 was performing purely administrative business functions.
20 He devoted earnest efforts to the settlement of all the
21 incidents occurring during said period:
22

23 (a) The explosion incident on the railroad
24 tracks at Liutiaokou near Mukden on 18 September 1931
25 was an entirely unexpected incident which KOISO and others
did not foresee, as was clearly shown by the testimony of

1 the witness KATAKURA, who was a staff officer of the Kwan-
2 tung Army at the time (T. 18,889, 18,891); the testimony
3 of MINAMI, Jiro, the then War Minister (T. 19,799-800);
4 the testimony of the witness KAWABE, Torashiro, then a
5 member of the Army General Staff Headquarters (T. 19,410)
6 and the testimony of SHIDEHARA, Kijuro, the then Foreign
7 Minister (T. 1388.) KOISO held at the time the post of
8 Director of the Military Affairs Bureau of the War
9 Ministry. At the time of the outbreak he was asleep at
10 home and learned of it for the first time by a report on
11 the telephone. On the following morning he hastened to
12 his office to handle such business of settling the inci-
13 dent as was delegated to him (KOISO, T. 32,215.)

14 (b) At the time of the outbreak of the Mukden
15 Incident (Liutiaokou Incident) the Japanese Government
16 received a report of investigation from the Kwantung Army
17 to the effect that the outbreak occurred because of shots
18 being fired by Chinese troops following an explosion at
19 the railway in consequence of which actions in self-
20 defense were taken (MINAMI, T. 19,886, 19,883; TANAKA,
21 T. 2,088; SHIDEHARA, T. 33,550.) The Government on its
22 part publicly declared from the outset and the accused
23 firmly believed that Japan's actions were in self-defense
24 and were not unlawful.
25

KOISO in carrying out his administrative duties

1 acted on the natural assumption that all such measures
2 of self-defense would be limited and controlled in
3 accordance with the policy of the Japanese Government
4 (KOISO, Ex. 3375, T. 32,216.) Moreover, those who were
5 connected with the WAKATSUKI Cabinet and the War Ministry
6 concentrated their efforts toward a quick settlement of
7 the incident even though they felt and believed that the
8 action taken by the Army had been proper and self-defens-
9 ive. (MINAMI, T. 19,787; KAWABE, T. 19,412; KATAKURA,
10 T. 18,815; WAKATSUKI, T. 1554-5; TANAKA, T. 1338, 1340,
11 2086 and 2088.)

12 Furthermore, the Lytton Report states in detail
13 of the plans of the Central Government of China to recover
14 its national rights, the customs and manners of the
15 Chinese people, the actions of the bandits and provincial
16 warlords, the boycott of foreign rights and interests in
17 China, especially cases of infringement of Japanese rights
18 and interests in Manchuria and the more than 300 pending
19 issues between Japan and China. The report recognizes
20 the repeated occurrences of perplexing incidents founded
21 upon the anti-Japanese attitude and actions of Chinese.
22 Moreover, the report states as the views of the Commission
23 of Inquiry regarding the incident of 18 September 1931
24 that the Japanese officers on the spot may well have been
25 of the belief and conviction that they were acting in

1 self-defense (Lytton Report, Ex. 57, T. 71.) From this
2 it is abundantly clear that the actions taken by the
3 Army were an exercise of what they naturally believed to
4 be self-defense and therefore did not constitute an
5 intentional or premeditated unlawful act.

6 (c) Upon being informed of the outbreak of the
7 incident a cabinet meeting was immediately called to dis-
8 cuss measures to be taken and reached unanimous agreement
9 to do everything in its power to settle it before it ex-
10 panded. Cabinet Ministers sent out telegraphic instruc-
11 tions to their subordinate organs and agencies in an
12 endeavor to settle the incident. This fact has been
13 clearly established by the testimony (OKADA, T. 1386;
14 WAKATSUKI, T. 1571; MINAMI, T. 19,781; KATAKURA, T.
15 18,897, 18,901, 18,905 and 18,907; KAWABE, T. 19,413,
16 SHIDEHARA, T. 1388) and it has been shown that from the
17 very outset of the incident the officials of the Japanese
18 Government who were KOISO's superiors had no intention
19 whatsoever of instigating aggression in Manchuria.

20 (d) At the time of the outbreak of the Manchuria
21 Incident, KOISO was a Director of the Military Affairs
22 Bureau of the War Ministry and later became Vice-Minister
23 of War (Ex. 114.) Matters pertaining to the dispatch of
24 troops to and military operations in Manchuria were out-
25 side the competence of his office as clearly shown by the

1 testimony of WAKATSUKI, Reijiro (T. 1588); of UGAKI,
2 Kazushige (T. 1620); and of MINAMI, Jiro (T. 19,851,
3 19,853 and 19,858.)

4 (c) The military actions (para. LL-28) with
5 which KOISO was related while Chief of Staff of the
6 Kwantung Army were actions taken for the maintenance of
7 law and order within Manchukuo based upon the Japan-
8 Manchukuo protocol (Ex. 440) and were believed to be
9 legitimate acts based upon the right of suppression of
10 banditry which right Japan had been able to reserve at
11 the council of the League of Nations as well as having
12 been authorized under treaty between what was believed by
13 KOISO and others to be two independent nations.
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1 There were in Manchuria at that time many
2 bandits with strongholds in various districts who,
3 combining with deserters and remnants from private
4 Chinese armies, committed banditry on a wide scale,
5 disrupting law and order and creating conditions
6 which did not permit of any neglect. The report of
7 the Lytton Commission describes in detail that these
8 bandits and soldiers who turned to banditry had
9 constituted a cancer in the maintenance of law and
10 order in Manchuria even long before the Manchurian
11 Incident (Ex. 57, T. 19). The testimony of KOISO
12 (Ex. 3375, T. 32,225) and of ARAKI (T. 28,316) was
13 that the actions of the Japanese forces were not
14 aggressive in design, but were actions for the maintenance
15 of law and order recognized by treaty.
16

17 (f) From 2 August 1930 to 29 February 1932
18 KOISO was Director of the Military Affairs Bureau of
19 the War Ministry; from 29 February 1932 to 8 August
20 1932, Vice-Minister of War, and from August 1932 to
21 5 March 1934, Chief of Staff of the Kwantung Army
22 (ex. 114). All these positions were those of an
23 administrative assistant and were not offices which
24 could directly and independently make any decisions.
25 (Ex. 73, Article 18 of the General Rules Concerning
the Organization of the Ministries, T. 504; SHIBAYAMA,

1 Ex. 3368, T. 31,800). From the cited proofs it is
2 clear that the office of the Director of the Military
3 Affairs Bureau was one of an administrative assistant
4 directly responsible to the Minister of War.

5 (g) The position of Vice-Minister was similar
6 to that of Bureau Director in that he was an advisory
7 assistant (Ex. 73, Article 14, T. 504). All documents
8 and drafts were made on the basis of and in accordance
9 with the instructions of the War Minister upon con-
10 firmation of the Minister's instruction and they
11 became official only after receiving the final approval
12 of the Minister. (SAWAMOTO, Ex. 3351, T. 31,672;
13 KAWAHARA, T. 31,754). Furthermore, there are three
14 forms of official documents relating to the Army.
15 Namely, those sent out with the name of the War
16 Minister, of the Vice-Minister and of the Senior
17 Adjutant, but all of these are sent out on the
18 responsibility of the War Minister, as testified by
19 the witness KAWAHARA, Naoichi (T. 31,753) and the
20 witness SHIBAYAMA, Kenshiro (Ex. 3368, T. 31,803).

21 (h) Again, the position of Chief of Staff
22 of the Kwantung Army which KOISO occupied from 8
23 August 1932 to 5 March 1934 (Ex. 114, T. 733) was that
24 of an administrative assistant to the Commander-in-Chief.
25 (Regulations Kwantung Army, Ex. 2415, T. 19,557).

It was the customary procedure to use

1 the name of the Chief of Staff in the sending and
2 receiving of notifications and telegrams as shown
3 by the witness KAWAHARA, Naoichi. (Ex. 3364, T. 31,756-
4 57). Moreover, the Chief of Staff of the Kwantung
5 Army being a staff officer of the Commander-in-Chief
6 as such he had no power of command of troops. In
7 the absence of the Commander-in-Chief the Senior
8 Commander of troops was the officer with power of
9 command and handled operational matters and acts as
10 commanding officer and not the Chief of Staff, who is
11 an administrative officer. (KOISO, T. 32,230; Regulation
12 Kwantung Army, Ex. 2415, T. 19,557). Hence not even
13 once did KOISO, while serving in Manchuria as Chief of
14 Staff, command troops or engage in military action.
15 In other words, he did not have direct responsibility
16 for the operational actions of the Army.

17
18 (1) The Prosecution, in their summation
19 (Par. LL-30) refers to the relation between the
20 control of opium in Manchuria and KOISO and contends
21 as if the special service department of the Kwantung
22 Army was controlling opium. However, MINAMI, in his
23 redirect examination clearly denied that this special
24 service department ever dealt with opium. (T. 20,074).
25 KOISO also testified that "the Kwantung Army had nothing

to do with the opium problem." (T. 32,374). KOISO
1 h , absolutely no connection with the control of
2 opium in Manchuria. In this matter there has been
3 a confusion of the special service organ with the
4 special service department. Control towards progressive
5 prohibition and its results are discussed in PART III,
6 Section 3 of the Manchurian General Summation.

7 (j) In connection with the Manchurian
8 Incident, since KOISO was always only an administrative
9 assistant carrying out the duties of his office in
10 accordance with and pursuant to the orders from the
11 War Minister or the Commander-in-Chief of the Kwantung
12 Army, as the case might be, he did not attend, as he
13 has testified (paragraph 29, KOISO, T. 32,256; T. 32,257)
14 any conferences or meetings such as might make him liable
15 to any charge of the crime of conspiracy.
16

17 (14) We submit KOISO is not amenable in
18 any way to the evidence produced against him under
19 Counts 2,6,18 or 27 of the Indictment.

20 (15) KOISO's belief and actions relying on
21 the Sovereignty and independence of Manchukuo in her
22 relations with Japan are consistent with the Duff case.

23 In the case of Duff Development Company,
24 Limited v. Government of Kelantan and Another in
25 which the House of Lords affirmed an order staying

proceedings against the Government of Kelantan on
1 the ground that the Sultan of Kelantan was an independent
2 sovereign ruler and the state was an independent
3 sovereign state over which the court had no jurisdiction,
4 Viscount Finlay made the following remarks regarding
5 the relation between sovereignty and independence:

6 "The question put was as to the status of
7 the ruler of Kelantan. It is obvious that for sovereignty
8 there must be a certain amount of independence, but
9 it is not in the least necessary that for sovereignty
10 there should be complete independence. It is quite
11 consistent with sovereignty that the sovereign may
12 in certain respects be dependent upon another Power;
13 the control, for instance, of foreign affairs may be
14 completely in the hands of a protecting Power, and there
15 may be agreements or treaties which limit the powers
16 of the sovereign even in internal affairs without
17 entailing a loss of the position of a sovereign Power."

18 (1924) A.C. 797,814. See also the concurring
19 opinions of Viscount Cave, Lord Dunedin, and Lord
20 Carson, *ibid.* 808-809, 820, 830.)

21 (Cited in Hackworth's Digest of International
22 Law, Vol. I. page 51).
23

24 THE PRESIDENT: We will recess for fifteen
25 minutes.

(Whereupon, at 1045, a recess was
taken until 1100, after which the proceedings
were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Brooks.

4 MR. BROOKS: SECTION 3 -- RELATING TO
5 COUNTS 3, 6, 28 and 48 -- CHINA.

6 1. On August 6, 1946, Prosecutor Morrow in
7 the opening statement of the China phase stated as
8 follows (T. 3246):

9 "Because of their conduct in official positions,
10 in successive Japanese governments which carried out
11 military aggression in the territory of China, as
12 well as their personal activity, participation or
13 acquiescence therein, all the defendants are respon-
14 sible for the war crimes, etc."

15 We submit that the general rule is that the
16 acts of a subordinate officer or soldier, done in
17 good faith and without malice in compliance with his
18 supposed duty, or of superior orders, are justifiable,
19 unless such acts are manifestly beyond the scope of
20 his authority, and such that a man of ordinary sense
21 and understanding would know to be illegal. KOISO
22 was opposed to interference in China's domestic
23 affairs and stood for Japanese-Chinese good will and
24 amity.
25

(The Kwannon Hall (Hall of the Goddess of

1 Mercy) was erected by him on the south mound in the
2 compound of the Temple Zojoji in Shiba Park, Tokyo,
3 and dedicated to prayer for the souls of Chinese and
4 Japanese, soldiers and civilians, who died in hostili-
5 ties between the two countries.)

6 We will present the official positions and
7 personal activity during this period of the accused
8 KOISO and show that he was not responsible for such
9 alleged war crimes.

10 On March 5, 1934, KOISO was transferred from
11 the post of Chief of Staff of the Kwantung Army to
12 that of Commander of the Fifth Division in Hiroshima,
13 Japan. Later he was transferred to Seoul, Korea,
14 when appointed Commander of the Korean Army on Decem-
15 ber 2, 1935, and he held this post until for the
16 purpose of retirement from active service he was
17 assigned to the General Staff on July 15, 1938
18 (Ex. 114, T. 734). His assignment to the General
19 Staff was the customary provisional appointment
20 designed to give a nominal post pending completion
21 of procedure for transfer to the reserve list. There
22 were no duties attached to this appointment to the
23 General Staff. This is further confirmed by the fact
24 that he was discharged from active service and trans-
25 ferred to the reserve list two weeks thereafter.

(Ex. 277, T. 3703).

1 KOISO, as we have seen, had no connection
2 whatsoever with the China Incident, during the years
3 1934 to 1938, the period of his service in Japan and
4 Korea as a soldier on the active list.

5 (1) The prosecution against KOISO presented
6 an administrative policy speech which was dated more
7 than seven years after the outbreak of the China
8 Incident when KOISO was Prime Minister in September
9 1944, the last stage of the Pacific War. (Ex. 277,
10 T. 3703). This evidence itself contains nothing
11 which might connect him with criminal acts relating
12 to the China Incident. An objection was made by
13 KOISO's defense counsel for said reason at the time
14 the document was presented in evidence. (T. 3718,
15 3719). Moreover, the President of the Tribunal him-
16 self remarked, "It looks like a speech that any Prime
17 Minister might make during a war." (T. 3719).

18
19 Following retirement from the Army after a
20 period of retirement, KOISO was appointed as Overseas
21 Affairs Minister (from April 7 to August 30, 1939),
22 then he retired again until his appointment as Over-
23 seas Affairs Minister (from January 16 to July 22,
24 1940) in the YONAI Cabinet. However, he did not,
25 while holding such position, participate in matters

1 pertaining to the Supreme Command or in matters
2 discussed by the Five Ministers' Conferences. Even
3 during his tenure of office as Prime Minister (from
4 July 22, 1944, to April 7, 1945) KOISO had never
5 participated in matters pertaining to the Supreme
6 Command, but, on the contrary, aspired for a speedy
7 restoration of peace between China and Japan and
8 made strenuous efforts towards that end by inviting
9 Miao Ping, who had secret contact with the Chungking
10 Government, to come to Japan in order to pave the
11 way for the conclusion of peace with China. (KOISO,
12 T. 32253; TANAKA, T. 32540, T. 32257, T. 32268; KIDO,
13 T. 31114, 31115).

14 (2) It was clearly established by the testi-
15 mony of UGAKI, Kazushige (T. 1620), by SHIDEHARA,
16 Kijuro (T. 1389, 1392), by an excerpt from the KIDO
17 Diary (Ex. 179f-1, T. 1940), by the testimony of
18 MINAMI, Jiro (T. 19853, 19851) and the testimony of
19 TOJO, Hideki (T. 36819, 36839) that the Supreme
20 Command had exclusive jurisdiction over military
21 operations of Japan, and that the Cabinet had no
22 authority to interfere with such military operations.

23
24 2. Although KOISO is charged in Count 48
25 with alleged murders committed around 18 June 1944 in
the City of Changsha, we respectfully submit that

1 KOISO had nothing to do with this incident as he was
2 in Korea holding the post of Governor of Korea when
3 the alleged incident occurred and the prosecution
4 produced no evidence of any connection of KOISO there-
5 with.

6 We submit that murder is the unlawful killing
7 of a human being with malice aforethought. In order
8 to find one guilty we submit that the prosecution
9 must prove that the accused killed a certain person
10 named or described by certain means as alleged (this
11 involves proof that the person alleged to have been
12 killed is dead; that he died in consequence of an
13 injury received by him; that such injury was the
14 result of the act of the accused; and that the death
15 took place within a year or reasonable time of such
16 act); and that such killing was with malice aforethought.

17 (3) We submit KOISC is not amenable in any
18 way to the evidence produced against him under Counts
19 3, 6, 28 or 48 of the Indictment.

20 (4) (In relation to LL-51):

21 The prosecution in the preamble to the In-
22 dictment stated that parliamentary institutions in
23 Japan were used as implements for widespread aggres-
24 sion. We submit it failed to establish this fact and
25 it should be considered that this presumption is

1 disproved and not justified. It is further refuted,
2 by the past career of many of the defendants and
3 witnesses who have testified before this Tribunal
4 of the rise and fall of 15 Cabinets, and of the differ-
5 ing reasons therefor, any member could block the
6 opposition in the Cabinet to give a new group of
7 statesmen an opportunity to confer and try and
8 arrive at a solution to the many complex problems of
9 modern government.

10 The parliamentary system in Japan was
11 established in 1890 and ended for all time the so-
12 called administration by clan cliques or arbitrary
13 administration by the bureaucrats of clan cliques,
14 to be replaced by party government. The party govern-
15 ments which came into being at great pains may have
16 often disregarded some national interests and welfare
17 and pursued selfish interests and policies in a fight
18 over political power. To make the situation worse,
19 some members of parties indulged in their own personal
20 profits at the expense of the system, as the result
21 of which, they came to lose a considerable degree of
22 confidence of many Japanese officials and civilians.
23 This situation reached its worst stage in the beginning
24 of the Showa Era (1926), which led groups of civilians
25 and young military officers to become thoroughly

aroused. Under such circumstances political party
1 members gradually became prudent and a party backed
2 by masses of society such as farmers, etc., sprang up
3 in addition to the old parties, thus the interpella-
4 tion in the Diet could break the long-established
5 custom to compromise and could adopt a tendency to
6 deal with matters upon their merit. The day when the
7 decision of the Diet could be swayed entirely by the
8 Government's own guiding policies was thus completely
9 wiped out. During the tenure of the KOISO Cabinet,
10 they adopted as one of its political programs the
11 encouragement of freedom of speech, as the result of
12 which, speech in the Diet became very active. However,
13 there was a custom not only among the members of the
14 Diet but also among the Japanese in general, due to
15 time-honored tradition and the influence of Chinese
16 thoughts that although brothers quarrel with each
17 other within the nation, they are united to put up a
18 fight when their decision has been made or their
19 existence endangered by foreign nations. Therefore,
20 Japanese people fought most furiously until a matter
21 under discussion was decided, but once a decision was
22 reached, even those who opposed it would often respect
23 the idea by submerging minority differences.
24
25

This custom was reflected in the Diet and,

1 though the proceedings were conducted according to
2 the provisions of the Constitution, once national
3 policy was approved by a majority of votes, it was
4 the established custom to support and uphold it
5 whether it was in time of peace or war. Although the
6 intrinsic nature of the Diet differed considerably
7 according to the period as stated above, it was a
8 fact that members were without exception always
9 cooperative, irrespective of the period, with
10 established national policy. It is our submission
11 that the culmination of democratic government is to
12 join and become one with a decision once it becomes
13 the majority decision. The prosecution theory seems
14 to disfavor this policy, and they have approved, or
15 in some instances seemed to praise the maintenance
16 of a non-cooperative attitude towards matters
17 decided by the majority, over opposition which once
18 out-voted, abided by the majority view, to make the
19 support unanimous, a custom of long standing in the
20 Parliamentary institutions of Japan.

22 The prosecution criticism that such parlia-
23 mentary institutions as existed in Japan were used as
24 implements of widespread aggression by unanimous con-
25 sent of the members is an observation which saw only
the attitude of the Diet that cooperated with the

1 national policy which had been established by majority
2 decision.

3 In cases, however, where the opposition was
4 firmly established in its mind, that the majority
5 decision could not be followed further with any hope
6 of readjustment or of obtaining unanimous support, we
7 see a cabinet fall and a new group of statesmen take
8 over the problem for consideration. Does the record
9 of all 15 of the cabinets, and the lack of a consistent
10 group following in each cabinet, have no special
11 significance, especially the record of KOISO, who
12 was not in a cabinet position. When any one of the
13 alleged illegal or hostile actions were commenced,
14 and had no part in their inception in any way.

15 SECTION 4 -- RELATING TO COUNT 5 --
16 TRIPARTITE ALLIANCE.

17 (1) In the opening statement made on
18 September 19, 1946 (T. 5900), Prosecutor Tavenner
19 described acts committed by certain defendants in
20 connection with the conclusion of the military alliance
21 among Japan, Germany and Italy, but did not refer to
22 any act of KOISO in connection therewith. The first
23 Tripartite Pact was discussed, met opposition and was
24 abandoned. The next Tripartite Pact was concluded
25 27 September 1940 (T. 36194) by the KONOYE Cabinet.

1 The prosecutor next directed attention to personnel
2 records and to the positions held by the accused dur-
3 ing this period. We likewise direct your attention
4 to the fact that KOISO opposed the first pact
5 (T. 32409) in 1939 and 1940 and had retired to his
6 home in the country shortly after the YONAI Cabinet
7 fell (22 July 1940) and had no part in the last
8 Tripartite Pact concluded by the KONOYE Cabinet on
9 27 September 1940.

10 (2) KOISO was opposed from the outset to
11 the conclusion of a military alliance between Japan,
12 Germany and Italy. A disagreement of views between
13 the War and Navy Ministers arose in 1939 during a
14 Five Ministers' conference (Premier, War, Navy,
15 Foreign, Finance) over the problem of the tri-
16 partite alliance. KOISO was asked by Lieutenant
17 Colonel IWAKURO to use his good offices to act as a
18 mediator to settle the deadlock resulting from dis-
19 agreement between the two Ministers. IWAKURO had
20 called on KOISO as the emissary of the War Ministry.
21 KOISO declined, however; and expressed his views
22 against the tripartite alliance. Explaining his
23 refusal later to the Premier, KOISO again expressed
24 the same views in opposition of the alliance (TANAKA,
25 T. 32531) as an advice to Premier HIRANUMA and

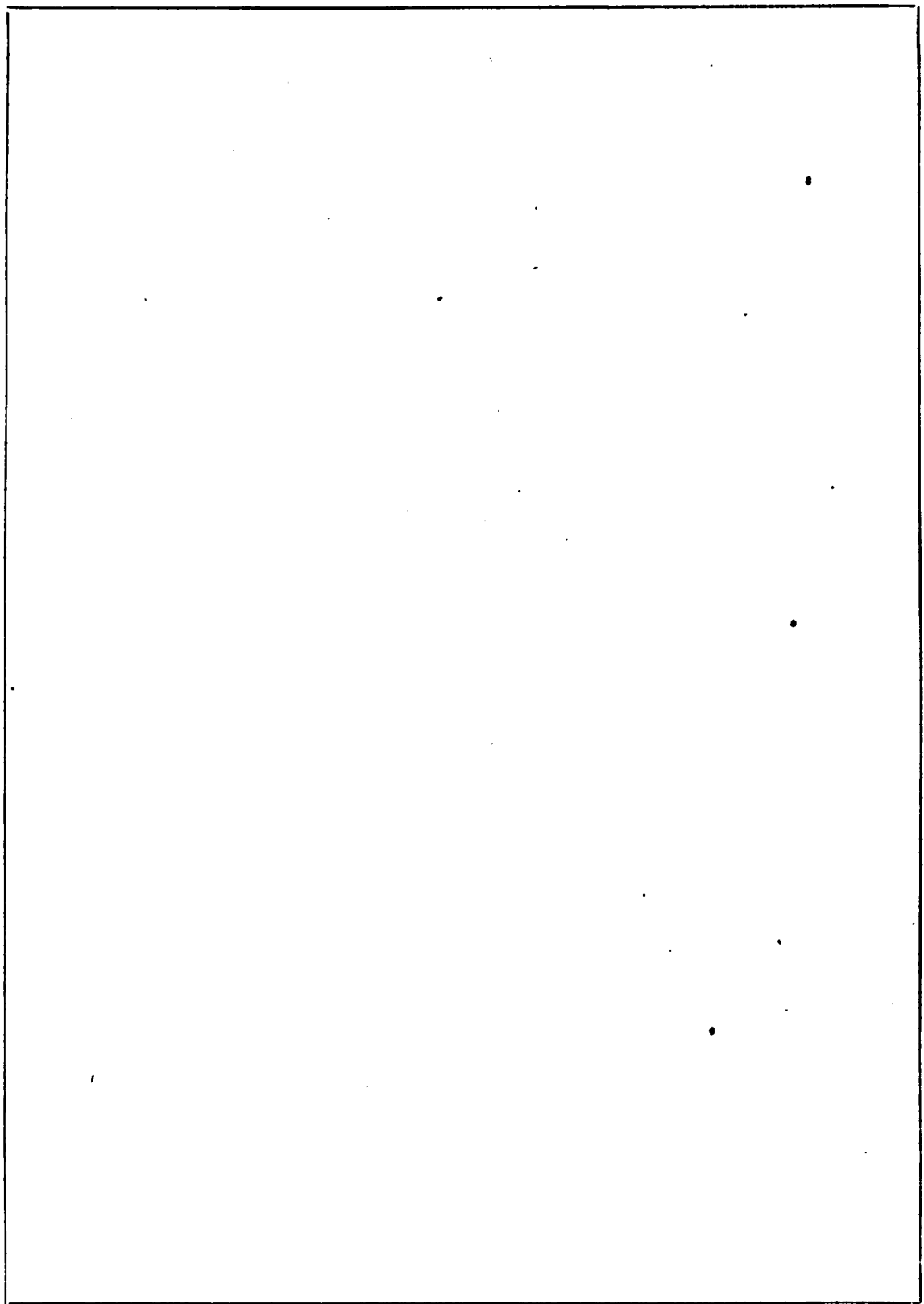
1 counselled that it be abandoned (T. 32235) as was
2 confirmed by TANAKA (T. 32531) and later by IWAKURO
3 in a document offered in rebuttal but rejected by
4 majority vote (T. 38511). KOISO stated the alliance
5 would be used to make Japan a cat's-paw (T. 32531)
6 for Germany and Italy and that Japan had nothing to
7 gain and that as a matter of fact it would irritate
8 the United States and Great Britain to the detriment
9 of Japan (T. 32235).

10 KOISO also believed a nonaggression pact
11 with Soviet Russia would be of more value and would
12 be honored by all countries and was opposed to such
13 military alliances for reasons quite similar to those
14 expressed by ISHII opposing said alliance at a later
15 date (26 September 1940) in a Privy Council meeting
16 (T. 6387).

17 (3) The YONAI who helped form the KOISO-
18 YONAI Cabinet testified in this case, and has been
19 labeled as a peace advocate and was not indicted for
20 his activity as joint Premier and Navy Minister in the
21 KOISO-YONAI Cabinet or for action of the YONAI or
22 HIRANUMA Cabinets.

23
24 KOISO was opposed to the conclusion of the
25 tripartite alliance as Overseas Minister in the YONAI
Cabinet in 1940 just as he had been in the HIRANUMA

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Cabinet in 1939. The YONAI Cabinet fell 22 July 1940
1 and was succeeded by the KONOYE Cabinet which later
2 concluded the pact. (T. 41326).
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The Prime Minister YONAI as well as the
1 Foreign Minister ARITA of the same cabinet were equally
2 opposed to the tripartite alliance, but no discussion
3 or action on the tripartite alliance was taken by this
4 cabinet. The tripartite alliance was signed 27 Septem-
5 ber 1940 by the KONOHE Cabinet (tr. 36,194). Particu-
6 larly, a problem of diplomatic policy as important as
7 that of concluding an alliance between Japan, Germany,
8 and Italy was a matter outside the authority of KOISO,
9 the Overseas Affairs Minister, and about which he would
10 not make a rash or independent statement. That he did
11 not seek on his own to feel out the German intentions
12 and desires is also clear from the testimony of TOKUGAWA
13 (tr. 32,517) and KOISO (tr. 32,237). Furthermore, such
14 information had already been obtained or requested
15 (tr. 6156 to 6165). When KOISO met Ambassador Ott it
16 was at the latter's request (tr. 32,468). He had just
17 met Ott for the first time and only listened, as the
18 interview was a brief one, to the suggestions of Ott
19 and did not enter into any discussion. Ott was trying
20 to ascertain Japanese views on Germany and apparently
21 confused KOISO's duties as Overseas Minister with
22 those of the Foreign Affairs Ministry (tr. 32,234-5 and
23 32,469). It is also clear from the testimony of witness
24 TOKUGAWA, Yoshitomo (ex. 3389, tr. 32,517) and of KOISO
25

(tr. 32,237) that Ambassador Ott's telegram (ex. 523, 1 tr. 6174) merely contained Ott's own conjecture, intended, 2 we submit, to arouse action from the German Foreign 3 Minister and to make his activity look more favorable 4 in the eyes of his home government (tr. 32,470). 5 Therefore, it was written as though he had influenced, 6 and was conveying, the views of KOISO, a known oppon- 7 ent to the alliance (tr. 32,411) (32,468). 8

9 That Ott often was motivated by such desire 10 is confirmed by evidence concerning other telegrams 11 addressed by Ott to his own government, which Ott admitted 12 were filled with groundless allegations based upon his 13 own hopes and conjectures. Defendant TOGO also testi- 14 fied to that effect (tr. 35,735-6) (F 134. G32). KOISO 15 was reported by advocates of the tripartite alliance 16 to have opposed it. Yet the prosecution endeavors to 17 support their charge against KOISO on the ground that 18 he favored its conclusion, relying on this distorted 19 telegram sent by Ott, and on what is purported to be a 20 Domei Radio Report (ex. 2214).

21 Ott stated several times in his own affidavit 22 (ex. 3579, tr. 34,863; 34,874; 34,901 and 34,903) 23 that he had used the names of Japanese leaders "for the 24 reason that it might add to the weight of the report 25 in the mind of the German Foreign Minister" and that

1 some of his reports were based on hearsay or were
2 erroneous (tr. 34,866; 34,878). We submit this
3 definitely substantiates our statement thereabout.
4 Also in relation to this telegram see paragraph (8) on
5 the last page of Section 5 below.

6 (4) The prosecution offered in evidence a
7 German document purporting to quote an alleged press
8 interview of Overseas Affairs Minister KOISO to show
9 that KOISO was connected with the realization of the
10 tripartite military alliance between Japan, Germany,
11 and Italy (ex. 2214, tr. 15,816 - 15,818).

12 We objected to this document because the
13 original, in German, contained many ambiguous points as
14 to who was speaking, and as to the authenticity of the
15 contents not being guaranteed or certified to by the
16 sender, as is shown on the face of the document. It
17 was later admitted by the prosecution that ARITA, the
18 Foreign Minister, had been confused with KOISO, the
19 Overseas Minister, by the translators (tr. 32,199).

20 Later in KOISO's individual defense phase,
21 we moved that the court strike this document or dis-
22 regard the latter part of said exhibit 2214, on the
23 ground that it lacked the necessary requirements to
24 be received in evidence (tr. 32,201).
25

Defendant KOISO had denied making any such

statement as contained therein, but stated that ARITA
1 may have done so (tr. 32,234; 32,235). In response
2 to our motion for dismissal, the prosecution stated:
3 "On 8 May 1939 he (KOISO) was discussing with ITAGAKI
4 the military alliance with Germany and Italy" (ex. 2214,
5 t. 16,866). However, this allegation of the prosecu-
6 tion we believe in good faith was made as a result of
7 careless and erroneous reading of said document; at any
8 rate, it is not true, as the original of said document
9 shows. We examined ARITA on this matter and he was
10 very evasive and said he had no recollection about it
11 (tr. 30,009 to 30,014).
12

13 Later, however, after consultation, the latter
14 half of this evidence was withdrawn by the prosecution
15 against KOISO, as it was found KOISO's name by error
16 had been substituted for ARITA's and that the speech
17 was made by ARITA and should not be attributed to KOISO
18 (tr. 32,199 to 32,201). The fact that the prosecution
19 are trying to utilize this Domei Radio Report of a
20 press interview and the distorted Ott telegram to not
21 only charge KOISO on the tripartite alliance issue,
22 but since they also are trying to use this evidence to
23 charge him in both the Netherlands and the French Indo-
24 China phase, indicates the weakness as well as the lack
25 of evidence to show any unlawful action or motives ex-

1 isted in relation to KOISO. Further, the contents of
2 this radio report were merely garbled opinions of a
3 newspaperman which were not substantiated and would
4 not have any probative value to show that KOISO was an
5 advocate of the tripartite military alliance, as an
6 examination of the original document will disclose
7 (tr. 32,200).

8 (5) The materials offered for contradicting
9 as well as refuting the prosecution's evidence we be-
10 lieve have succeeded in showing that KOISO had con-
11 stantly opposed the conclusion of a tripartite alliance
12 and that there is no evidence to support the prosecu-
13 tion's allegations (tr. 32,410).

14 (6) An excerpt from the entry of the SAIONJI-
15 PARADA Memoirs No. 324 (May 8, 1939), which the prosecu-
16 tion offered in evidence (ex. 3801-B, T. 37,814), when
17 examined, shows KOISO was not expressing his opinion
18 but that KOISO had expressed what he had heard was
19 the army opinion (tr. 37,890, 37,891, 38,008 to 38,010)
20 that the officers and men at the front are displeased
21 with British and French aid to Chiang Kai-shek, and an
22 alliance with Germany and Italy was being asked by the
23 army to alleviate their feeling before requesting the
24 good offices of Britain and France to act as mediators
25 in order to terminate the China Incident speedily.

1 The next sentence which HARADA characterizes this state-
2 ment of the army as "a usual pet expression" was agreed
3 to by KOISO as being the army's usual pet expression,
4 so it is clear from this it was not KOISO's opinion,
5 which is further clarified by the paragraph which
6 followed. (See correction at tr. 38,008 to 38,010.)

7 (7) KOISO stated that in May 1939 he had
8 expressed his opposition to the conclusion of the tri-
9 partite alliance to Premier HIRANUMA and Vice-War Minister
10 YAMAYAKI as discussed above in paragraph (2).

11 Moreover, a previous entry in the SAIONJI-
12 HARADA Memoirs No. 321 (April 18, 1939) states that
13 Colonel IWAKURO had sent a man to ARITA, the Foreign
14 Minister, to urge the establishment of a military
15 alliance, but that he had been pressed by KOISO to calm
16 down. This eloquently testifies to the fact that
17 HARADA also knew that KOISO was an opponent of the
18 tripartite alliance, and contradicts the prosecution's
19 interpretation of No. 3241 (tr. 32,405) (tr. 32,409).

20 (8) We further submit that entries of the
21 SAIONJI-HARADA Memoirs being hearsay based on hearsay,
22 since they are not even taken from original entries,
23 they are often found to be inconsistent and distorted
24 and should fall before direct testimony or the mere
25 denial of an accused (tr. 32,406). It is also clear

1 from the testimony that KOISO had advocated for years
2 a speedy settlement of the China Incident, request-
3 ing Britain and France to assume good offices for media-
4 tion (tr. 32,231).

5 (9) We submit KOISO is not amenable in any
6 way to the evidence produced against him under count 5
7 of the indictment.

8 (10) The prosecution states at transcript
9 page 461 as follows:

10 "We suppose that the first universally recog-
11 nized doctrine is that self-preservation is the first
12 law of nature."

13 We agree with this statement and KOISO be-
14 lieved the action taken by Japan in Manchuria, China
15 and the Southern Areas was for self-preservation or for
16 the purpose of self-defense, and was, as stated by
17 responsible leaders, to be based on the first law of
18 nature. For what reason should he doubt such state-
19 ments made by Japanese Government spokesmen that China
20 broke this first law? Or Soviet Russia? Such spokes-
21 men believed there was a limit to self-preservation,
22 which must not be overstepped; but that a nation's right
23 of self-defense was protected by international law.

24 China might contend, as it was hypothetically
25 argued, that it was for the self-preservation of China

1 that she destroyed the Japanese railroad at Liutiaukou
2 and attacked the Japanese troops at Marco Polo Bridge.
3 However, the South Manchuria Railway was owned by Japan,
4 according to the provisions of an international treaty,
5 and the stationing of troops in North China was enforced
6 publicly by virtue of the provisions of an international
7 treaty. How could KOISO determine whether the actions
8 of China which violated the provisions of the treaty
9 were not illegal actions? Were there no other aggres-
10 sive actions against Japan in utter violation of the
11 neutrality treaty that drove her into the tripartite
12 alliance despite the opposition and counsel of KOISO and
13 later of ISHII and other statesmen of Japan (tr. 6387,
14 31,235, tr. 32,410)?

15 America, Britain and the Netherlands by power-
16 ful combined strength in league with China were being
17 accused of provocative actions against Japan in mili-
18 tary as well as economic fields by the A.B.C.D. encircle-
19 ments; this finally led to the United States in the
20 course of negotiations handing Japan the "Hull" note, which
21 America herself is said to have believed to be im-
22 possible of acceptance. Japan was said to be in a des-
23 perate situation. These actions were said to over-step
24 the necessary limit of self-preservation.

25 Japan was defeated after receiving the

necessary killing, wounding and destruction, and abandon-
1 oning arms. is relinquishing factories and other resources
2 by way of reparations to the Allied Powers. The defeated
3 have always been punished by way of reparations. However,
4 the might of the victor does not mean that all their
5 former policies are now considered to have been proper,
6 just, and wise, and that the defeated were foolish or
7 unreasonable in their belief, fears, and actions.

8 The right to exercise self-defense should by
9 no means be a law to be applied favorably only to the
10 victors. There are three definite and separate hostili-
11 ties in this period, the first and second being very
12 remote from the last.

13 The prosecution, at transcript page 462,
14 pointed out to the Tribunal the object of this trial
15 in the following words:
16

17 "Such a finding may well prevent such individ-
18 uals as these accused or their prototypes or followers
19 from gaining seats of authority or position of influence
20 in their own community."

21 "as it possible for any statesman or any man
22 taking up any important position of authority during
23 one of said three periods to disbelieve other govern-
24 ment leaders or no matter who he may be, to disregard
25 the security, self-preservation, happiness and develop-

ment of his country and his people? Even the leaders
1 of barbaric and illiterate races held these ideas of
2 trust, confidence and patriotism.
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1 KOISO, as will be stated fully in a later
2 section, favored non-aggression pacts (HIRANUMA Cab-
3 inet) as more favorable and conducive to peace than
4 military alliance and warned HIRANUMA (T. 32,235),
5 the same as ISHII warned TOJO (T. 6387) and the
6 KONOYE Cabinet that Hitler would make a cat's-paw
7 of Japan and was a dangerous character who could
8 not be trusted not to break an alliance, but despite
9 such warnings, on 27 September 1940 the pact was put
10 through and proved a bar in Japanese-American
11 negotiations.

12 (11) In relation to the Anti-Comintern Pact
13 of 1938, renewed in 1941, the Tri-Partite Pact of 1940
14 and the Cultural and Trade Agreements signed between
15 Japan in 1938 and 1939, and the No Separate Peace Pact
16 of 1941, the prosecution contends that these agreements
17 signed by the military representative on behalf of their
18 separate countries were concluded with the view of
19 obtaining the ends of Count 5 in the Indictment.
20 We submit that prosecution evidence (Ex. 480, 483,
21 37, 38, 39 and 589) indicates this could not be true
22 in regard to the Anti-Comintern Pact and the Cultural
23 and Trade Agreements. As to the other pact, treaties
24 and agreements, in their conclusion the will of
25 the State was expressed by the signed instrument

1 to preclude the extension of hostilities and the aim
2 of the aforesaid pact was defensive and pacific as
3 made clear by prosecution evidence. (Ex. 43, 554,
4 553-p 3, and 558-p 1.) The prosecution construes
5 "Establishment of a Co-Prosperity Sphere" to mean
6 or indicate "invasion." This is erroneous. States
7 lying in geographical propinquity are deeply affected
8 by conditions of their neighbors, and the above phrase
9 means that countries with common interests should
10 unite their efforts to cooperate and further their
11 mutual prosperity taking into consideration the
12 resources and needs of their respective people in a
13 regional community, itself a component and cooperating
14 part of the universal community, thus cooperating and
15 contributing to the progress of culture, well-being
16 and understanding, and taking advantage of the special
17 abilities of each to contribute thereto. Court
18 exhibits (Ex. 529-p 1, 553-p 3, 557-p 1, 558- pp 1 & 2)
19 indicate that although misuse can be made of the term
20 "Co-Prosperity", in a sense which it originally does
21 not possess, it is improper and erroneous to give it
22 such meaning.
23

24 Concerning war criminals of Germany, who
25 endeavored to drive Japan into a war with the U.S.S.R.,
the United States and Great Britain, the Nuernberg

1 decision did not question the treaty of alliance
2 between Germany and Japan but only stated, "Ribbentrop
3 attended a conference in May 1941 with Hitler and
4 Antonescuc relating to Rumania's participation in
5 the attack on the U.S.S.R. He also consulted with
6 Rosenberg in preliminary planning for political
7 exploitation of Soviet territories and in July 1941,
8 after the outbreak of war, urged Japan to attack the
9 Soviet Union." This confirms the error of the prosec-
10 ution's view. KOISO at the conclusion of the Anti-
11 Comintern Pact, was residing in Keijo, Korea.

12 As Minister of Overseas Affairs in the
13 HIRANUMA Cabinet in 1939, which was after Ribbentrop's
14 approach to Japan in the early part of said year,
15 cabinet opinion was divided as to concluding said
16 alliance, and KOISO opposed it and a committee of those
17 mostly concerned was set up to study this problem, but
18 they never reached a conclusion. (Ex. 504; T. 6108).
19 The cabinet fell 30 August 1939 as the result of the
20 conclusion of the Non-Aggression Pact between Germany
21 and U.S.S.R.; 23 August 1939 KOISO resigned as Minister
22 of Overseas Affairs (T. 5859, Ex. 114), and took no
23 part in the conclusion of the Japanese-German Alliance.
24 On 16 January 1940 KOISO joined the YONAI Cabinet as
25 Minister of Overseas Affairs, but in this cabinet the

1 Prime Minister, YONAI, Foreign Minister, ARITA, the
2 defendant KOISO and others opposed the conclusion of
3 the Tri-Partite Alliance during their tenure of office.
4 Dissatisfaction on the part of the Army concerning
5 this opposition caused the cabinet to fall 22 July 1940
6 and KOISO was obliged to resign (Ex. 515, 520, 530,
7 531 and 532, T. 5865 - 5866).

8 SECTION 5 -- RELATING TO NETHERLANDS
9 COUNTS 4, 14 and 32 (G 29, G 34 (G 169))

10 (1) In the Netherlands phase the prosecution,
11 again, cited the Ott telegram, and allege KOISO, as
12 Overseas Minister, on 24 June 1940, showed his interest
13 by making an inquiry of Ott (T. 11,639). We discuss
14 this evidence fully under Section 4, par. (3) above
15 and (T. 32,517, Ex. 3389, T. 32,237) in par. (8) hereund-
16 er.

17 (2) The prosecution stated one of the first
18 moves of the new KOISO - YONAI Cabinet made by Prime
19 Minister KOISO, in his speech before the Diet,
20 7 September 1944, promised independence to the
21 Netherlands Indies. The prosecution stated no
22 details were given, however, as to how, when and to
23 what extent independence would be granted and, indeed,
24 even at this stage there was no intention to take
25 definite steps in that direction (T. 11,666). Why,

then, did KOISO make the announcement?

1 (3) The prosecution also offered against
2 KOISO an alleged reply at the time he was Overseas
3 Minister in a discussion over the SHINOHARA speech on
4 population and economic questions of the South Seas
5 region and remarks of FUKUDA (Ex. 2215-A, T. 15,819
6 and Ex. 3382, T. 32,423 - 32,425). KOISO's testimony
7 (T. 32,244), as well as that of TANAKA Takeo (T. 32,532)
8 show what KOISO (T. 32,464-7) meant by his actual reply.
9 They state the reply that was actually made was to the
10 effect that economic influence should be extended peace-
11 fully to the South and that their discussion did not
12 touch or relate to any military advance or aggressive
13 military operation. One of the reasons why the
14 prosecution were misled is that the prosecution
15 translated the Japanese word "hatten" to mean "expansion"
16 when said word is generally translated as "development"
17 and used in that sense. Here these men were discussing
18 economic developments to be handled and population
19 problems (T. 15,822) to be handled which would arise
20 after peace was restored (T. 15,822) and be developments
21 in cooperation with other peoples in a spirit of friend-
22 ship and conciliation; that is, they were discussing a
23 probable and natural, not an unreasonable or strained,
24 development or expansion by military force (T. 15,825).
25

1 The document's words "the south" used in his alleged
2 reply are indefinite but they do not imply they
3 indicated the Netherlands East Indies or French Indo-
4 China except as outlets for over-population (T. 32,425),
5 and as to the primary point of the discussion as to
6 economic development, KOISO only indicated the region
7 which included Formosa (T. 15,821) (T. 15,826) and the
8 Japanese mandated areas (T. 32,426). The FUKUDA and
9 SHINOHARA statements which are being discussed also
10 makes this point clear that no unlawful action was
11 contemplated. Furthermore, no special steps were
12 taken by the Cabinet to carry out such programs
13 (T. 32,467).

14 (4) The prosecution alleged, quoting from
15 Van Hook's book (Ex. 1309-A, T. 11,796), that KOISO,
16 in a press interview (August 3, 1940), reproached the
17 Netherlands Government, saying it was extremely
18 oppressive towards the natives of the Netherlands East
19 Indies. That document, however, contains mere hearsay
20 opinion of Van Hook concerning a newspaper article
21 and does not state the truth (T. 32,427). We submit
22 such evidence has no probative value, nor that if
23 KOISO had actually made such a statement, that it would
24 not prove any connection with any unlawful action.
25

With regard to the prosecution summation (G-29

and G-34):

1 KOISO had been designated as chief delegate to
2 the Netherlands East Indies in July, 1940 but his
3 dispatch was cancelled, not because, as the prosecu-
4 tion contends, he was unacceptable to Holland, but
5 because KOISO himself declined the offer on the
6 ground that he thought he was not suited for the task.
7 (T. 32,344). As to the circumstances of the selection
8 of KOISO to head the delegation, he had, of course,
9 nothing to do with it, and this evidence has no
10 probative value to make KOISO responsible for the
11 acts of others thereafter. (T. 32,429).
12

13 (5) In the fourth paragraph of Exhibit 1344
14 we find the KOISO-YONAI Cabinet had decided that the
15 independence of the East Indies should be declared at
16 the next Diet session. This evidence only shows KOISO
17 had the intention of recognizing the independence and
18 self-government of the East Indies and does not prove
19 that KOISO approved or was connected with any prior
20 prosecution of an alleged illegal war against this area.
21

22 (6) The prosecution relies on groundless
23 suspicion that KOISO was connected with alleged aggress-
24 ion against the Netherlands East Indies. (G 169).

25 The KOISO-YONAI Cabinet, while primarily
working to devise a method to bring about the conclusion

1 of hostilities, tried to better conditions in various
2 areas and granting independence was in line with the
3 earlier fundamental policy of Japan to allow the eman-
4 cipation of all races of East Asia to which the policy
5 of their cabinet was a return and was contrary to the
6 territorial incorporation policy.

7 If the KOISO Cabinet had been aggressively in-
8 clined they could have invaded and annexed these terri-
9 tories and no such declaration promising independence
10 would have been made in the Diet.

11 The roundabout theory of the prosecution is
12 based on a presumption that overlooks the fact that if
13 KOISO had any unlawful aggressive connection with this
14 matter he would not have taken promptly such a step as
15 to formally promise independence at a Diet session.
16 The fact that steps taken by the KOISO-YONAI Cabinet
17 following the formal promise did not result in a full
18 immediate granting of independence and that the next,
19 SUZUKI Cabinet, did not carry out this promise until
20 17 July 1945 (Ex. 1350, T. 12,236) does not constitute
21 ground on which to question the good faith of KOISO's
22 actions. We submit that it would be improper to use
23 this as evidence of any connection with or of an
24 intention to commit an illegal act by KOISO.

25 (7) We submit KOISO is not amenable in any

1 way to the evidence produced against him under Counts
2 4, 14, or 32 of the Indictment.

3 (8) In relation to the Ott telegram (Ex. 523,
4 T. 6174) (LL-36): The prosecution's claim that KOISO
5 was seeking information on 24 June 1940 as to Germany's
6 attitude as to Indo-China and the Netherlands is also
7 questioned as unreasonable, since in May 1940 this
8 information had already been furnished as to the
9 Netherlands and published in the papers (Ex. 517 to 519)
10 (T. 6156 to 6162); and as to Indo-China, information
11 had been requested (Ex. 520) on 19 June 1940 (T.6163-5).
12 Why should KOISO at this later date make such inquiry?
13 This further confirms our contention as to said
14 telegram being a device of Ott used for purposes of
15 his own (T. 32,468 to 70) and falsely quoting KOISO
16 in order to acquire certain information or reaction
17 from Germany for purposes of his own. It is further
18 submitted to be contrary to the rules of evidence to
19 use the record of an alleged conversation between A (Ott)
20 and B (KOISO), against B when such record was compiled
21 by A without knowledge of B. Although it may be used
22 against A, it should not be used against B unless the
23 signature of B or other evidence of confirmation by B
24 is definitely established. Here there is no evidence
25 of confirmation but a denial (T. 32,237) supported by

1 the testimony of the interpreter present (TOKUGAWA,
2 T. 32,517). Since the conversation was through an
3 interpreter, there is no assurance that opinions or
4 judgments of the interpreter, as well as of the
5 recorder, were not included. Therefore, there arises
6 automatically great doubt as to the accuracy of these
7 records made (24 June 1940, Ex. 523, T. 6175) from
8 memory, four days after the conversation took place
9 (20 June 1940, T. 32,516). The above legal principle
10 should also apply to the use of the KIDO Diary and
11 the SAIONJI-JARADA Memoirs.

12 Also see (3) Section 4 above for previous
13 discussion on this telegram.

14 KOISO resigned 22 July 1940 and retired as a
15 private citizen shortly thereafter (T. 735).

16
17 SECTION 6 -- RELATING TO COUNTS 4 and 15 --
18 FRANCE.

19 (1) KOISO is not charged in Count 23 with
20 regard to initiating and waging an illegal war against
21 the Republic of France.

22 (2) The prosecution placed in evidence a
23 telegram from German Ambassador Ott to the German
24 Foreign Office in 1939 (Ex. 614, T. 6792), in which a
25 report was made of the possibility of Japan taking part

1 in the war against Britain and France. KOISO was at
2 that time the Minister of Overseas Affairs and the
3 prosecution, without considering the nature of his
4 duties (LL-33, LL-40) and that he did not have the
5 duties or of the responsibility of a Foreign Minister,
6 wish the Court to infer KOISO must have been responsible
7 for failing to prevent alleged aggression against the
8 Republic of France. It is already shown, however,
9 how the official authority of the Overseas Minister
10 was very limited (Ex. 87, T. 505, Organization Overseas
11 Ministry); that important foreign policies were decided
12 at the Five Ministers' Conference and that the Overseas
13 Minister was excluded from such Conference (TANAYA,
14 T. 32,530). Moreover, it was stated simply that
15 KOISO was the Overseas Minister and no evidence was
16 adduced to establish the relevancy of this statement or
17 the relation between KOISO and any alleged aggression
18 against the Republic of France.

19
20 (2) The prosecution contends (LL-49) that it
21 was illegal that the Japanese troops at Saigon handed
22 an ultimatum to the Governor-General of French Indo-
23 China on March 9, 1945, and demanded its approval in
24 a short space of time. This, however, was not by
25 decision of the Supreme War Guidance Council that a
reply was requested in a short space of time, but was

1 by the Supreme Command and was an attitude taken by
2 diplomatic representatives on the spot at the request
3 of the Commander of the Japanese forces on the spot.
4 (T. 32,471). The testimony of TOJO (T. 36,819) and
5 of KOISO (T. 32,245) make it clear that such matters
6 were decided on the spot and were measures which belonged
7 to the field of the High Command and were matters outside
8 the responsibility of Premier KOISO. (T. 32,471-2).

9 The reason why there was included in the
10 measures for French Indo-China a stipulation with
11 respect to a case in which French Indo-China might
12 reject Japan's demand was explained by those concerned
13 as follows:

14 The Governor-General of French Indo-China took
15 action in accordance with instructions from the Vichy
16 Government in France and was at first cooperative.
17 Japan's military actions in French Indo-China had been
18 based on an agreement already concluded between the
19 Japanese Government and the Governor-General of French
20 Indo-China. A part of the Japanese troops were engaged
21 in military actions with perfect understanding of the
22 French Indo-China Government (TOJO, T. 36,823).
23 KOISO, T. 32,471). Since that time, however, especially
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25

1 as the Pacific War had developed in favor of the Anglo-
2 American side, the French Indo-China Government gradu-
3 ally indicated it was shifting so as to be able to
4 come under the authority of the De Gaulle regime, and
5 its attitude towards Japan became exceedingly non-
6 cooperative around February, 1945. (TOJO, T. 36,823;
7 KOISO, " 32,471).

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1 Prosecutor ONETO, in his opening statement,
2 stated that the De Gaulle regime declared war against
3 Japan on December 8, 1941, while it was in Africa
4 (T. 6724), and this was known (T. 32,441-2) to the
5 Japanese Government by Minister OKAMOTO's report con-
6 cerning a Reuter's despatch of September 1, 1944.
7 (Ex. 3556, T. 34,550). However, the situation in
8 the Pacific area had become unfavorable to Japan day
9 after day and the condition became so difficult for
10 Japan that there seemed to be imminent the danger of
11 an immediate landing in French Indo-China of allied
12 forces. The decision of the High Command to meet
13 this threatened danger was declared necessary as a
14 military measure to be taken for self-defense in the
15 view of the Supreme Commander of the Japanese forces
16 on the spot. It was said that military necessity
17 dictated meeting this possible allied strategic move
18 and this action by the Supreme Command was believed
19 to be in accordance with their power and to be in
20 accordance with the correct standard for military
21 actions against a belligerent according to inter-
22 national law, and was not considered to be an illegal
23 act in any sense.
24

25 Furthermore, it was outside the scope of the
 Cabinet to act on such matters as were in the sphere

1 of the Supreme Command. Moreover, with a view to
2 dealing with French Indo-China as smoothly and amic-
3 ably as possible, it had been requested that the ap-
4 proval of French Indo-China be obtained in advance
5 to have troops and police forces reorganized and
6 placed under the control of the Japanese Commander.

7 The circumstances in this regard are clearly
8 stated by KOISO in his redirect examination. (T.
9 32,471). In the document entitled "Measures Towards
10 French Indo-China to Meet the Sudden Change in the
11 Situations," dated February 1, 1945 (Ex. 661, T. 7165),
12 in the note at the end of item 2, it was stipulated
13 that the rights and interests of the French people in
14 general shall be treated leniently (T. 7169), and in
15 Ex. 663, there was a stipulation regarding the pro-
16 tection of rights and interests of the French people.

17 (4) We submit KOISO is not amenable in any
18 way to the evidence produced against him under Counts
19 4 and 15 of the Indictment.

20 (5) Relating to Ott's telegram (Ex. 523)
21 see (8) Section 5 above and (3) Section 4 above.

22 Section 7: Relating to Counts 4, 17, 26
23 and 36-USSR.

24 1. Witness TANAKA, Ryukichi, related that
25 prior to the outbreak of the Changkufeng Incident,

1 "I did not see any of these documents directly or
2 myself at the Divisional Headquarters, but judging
3 from common military knowledge, I would say that the
4 order for concentration was naturally given by Com-
5 mander of the Army, KOISO." (T. 22,751)

6 This was a mere conclusion of the witness and
7 was not true, but was presumed from the fact that at
8 one time KOISO had been the Commander of the Army,
9 but the evidence shows such order was not given by
10 KOISO but by Commanding General NAKAMURA who succeeded
11 KOISO (T. 32,232-3) (T. 32,511-3). Furthermore, the
12 order given by NAKAMURA was for concentration and was
13 not an order for attack (T. 22,751). The prosecution
14 has tendered no evidence whatever to connect KOISO
15 with Counts 26 or 36.

16 1) With respect to the testimony of TANAKA,
17 Ryukichi, it is refuted by the testimony of KOISO
18 (T. 32,232-32,233) and by the testimony of KIFANO,
19 Kenzo, chief of staff of the Korean Army. (T. 32,511
20 and 32,513) When authority to concentrate the troops
21 was requested by one of his commanders, General
22 KOISO sent a wire to Tokyo to the General Army Staff
23 Headquarters for instructions. The reply telegram to
24 this request did not reach Seoul until July 16. On
25 July 15 KOISO had received orders transferring him,

1 preparatory to his retirement from active service, to
2 the Army General Staff Office (Ex. 114). The succeed-
3 ing Commander, General NAKAMURA, took measures for
4 concentration on the basis of orders received from
5 Tokyo. KOISO therefore had nothing to do with issu-
6 ing any order for concentration of troops, or for the
7 events that took place.

8 2) With respect to the incident at Khackhin
9 Gol River, (Count 26), the action of such troops were
10 under the jurisdiction of the High Command. This
11 took place at the time when KOISO was an Overseas
12 Minister and the Cabinet had nothing to do with the
13 High Command. That this was a border dispute be-
14 tween Manchukuo and the Mongolian Peoples' Republic
15 is further submitted and confirmed by the fact that
16 it did not extend beyond the area where it occurred,
17 and moreover, it was amicably settled soon after
18 between Japan, manchukuo and Soviet Russia.

19 KOISO was an advocate of a non-aggression
20 pact between Japan and the Soviet Union, as mentioned
21 in Section Two above. KOISO regretted the outbreak
22 of the incident from its very outset and fervently
23 hoped for its speedy settlement for the restoration
24 of tranquility. Even at the time of the China Affair
25 he was from the very beginning an advocate of a

1 local settlement. Without even considering any dis-
2 pleasure he might cause among certain army authori-
3 ties, he submitted his frank opinions and strongly
4 insisted upon a quick local settlement.

5 Considering his many humanistic acts, I
6 believe we can see that he was a moral as well as
7 religious and upright man, and a profound believer
8 in friendship and peace and in non-interference in
9 domestic affairs of other nations.

10 It is also mentioned in the preceding Section
11 that the Overseas Minister had no voice nor right to
12 attend the Five Ministers' Conferences which deliber-
13 ated on important foreign policies. (TANAKA T. 32,530).
14 Their decisions were not referred to the cabinet for
15 approval as the Foreign Minister had authority to act
16 independently and did in such matters as this without
17 such reference.

18 3) We submit KOISO is not amenable in any
19 way to the evidence produced against him under Counts
20 4, 17, 26 or 36 of the Indictment.

21 4) Furthermore, in Section H of the prose-
22 cution's Summation, KOISO is not directly named or
23 accused of improper or unlawful activity. Where
24 they say all the accused were organized and planned
25 aggression against the USSR, they ask the Court to

1 presume, under their theory of conspiracy, (par.
2 H. 185 to 193) that the accused are responsible for
3 the actions of others and of each government of
4 Japan, based on a presumption (H 26) that such alleged
5 criminal plans of aggression existed or can be in-
6 ferred from the evidence. Under such practice a
7 course of action taken by a defeated nation which
8 resulted in damage to a victor nation could under
9 any conditions be said to have resulted from a con-
10 spiracy or vice versa, depending on who won the war,
11 but that does not furnish proof by evidence of proba-
12 tive value sufficient to support a charge and con-
13 viction from merely being a Japanese or an official
14 of the government for a period of time, and there is
15 more than doubt (H 192) that the accused were always
16 organized and acted knowingly, fully understanding the
17 character of their actions and aware of their conse-
18 quences.

19 SECTION 8 -- RELATING TO COUNTS 7-13, 16,
20 29 TO 31 AND 34 -- KOISO-YONAI CABINET.

21 We now proceed to the consideration of the
22 period (FF-113) when KOISO occupied the position of
23 Prime Minister in the Joint KOISO-YONAI Cabinet.
24

25 (1) KOISO became Premier on July 22, 1944,
several years after the war commenced by the TOJO

1 Cabinet had led to its collapse, with overwhelming
2 defeat certain. The reason KOISO assumed the post
3 of the Prime Minister was not due to any request of
4 TOJO or the TOJO Cabinet to take charge of the situa-
5 tion, which was at one time asserted by the prosecu-
6 tion in prosecution document 0001 but later corrected
7 as an error in a supplement thereto, but it was be-
8 cause of an Imperial Order sent to KOISO, who was in
9 Northern Korea when he received the telephone call
10 from the Grand Chamberlain (T. 32,533) and was in-
11 formed of the summons of His Majesty the Emperor
12 based on the recommendation of the Conference of the
13 Senior Statesmen (Jushin). (Ex. 1280, T. 11,383;
14 TANAKA, T. 32,535; Ex. 1278; KIDO, T. 31,103-4).
15 (Ex. 3229, T. 29,265-6).

16 This summons meant that he was to be ordered
17 by His Majesty to form a new Cabinet. KOISO studied
18 what kind of policy to adopt to carry out the affairs
19 of the state. He was not familiar with the details
20 of the war situation but thought it permitted of no
21 optimism. (T. 32,533). He stated he thought it no
22 longer the time now to continue the war, but the
23 time to seek an opportunity to make peace with the
24 Allied Powers. (T. 32,535, 38,928). However, such
25 a matter as this could not be decided until after he

1 had an audience with the Emperor (T. 11,383 to
2 11,384), and it was discreet and tactful not to ex-
3 press openly such views at that time. Since the
4 TOJO Cabinet was the one in office when the war be-
5 gan, KOISO felt that if the coming Cabinet was to
6 end the war it was essential that Cabinet Ministers
7 be selected who would conform to that purpose. When
8 the KOISO Cabinet was formed, only three Ministers
9 were retained from the previous Cabinet: SHIGEMITSU,
10 Foreign Minister; ISHIWATA, Finance Minister; and
11 FUGIWARA, Munitions Minister. (Ex. 102)

12 KOISO had, in view of the increasingly grave
13 military situation, felt that the creation of any
14 friction from a change in these three posts would
15 cause uncertainty even if only for a moment both at
16 home and abroad and might bring great worry and
17 anxiety to His Majesty and cause a sense of uneasi-
18 ness to the people in general, which would be unfor-
19 tunate, so he had prudently for the time being made
20 the choice of retaining the three Ministers who were
21 responsible for diplomacy, finance and munitions.

22 Later KOISO undertook to reorganize the
23 Cabinet but it appeared that, because conditions
24 within the Cabinet were found to leak out in advance,
25 various obstacles were met (T. 32,542, 32,543) in the

1 carrying out of necessary measures. It is clear from
2 the exhibits (Ex. 1278, 1279 and 1280) that KOISO did
3 not voluntarily seek and gain the position of Prime
4 Minister, but the Imperial Summons came completely
5 like a bolt from the blue to him in Korea (T. 11,383).
6 He returned to Tokyo ignorant of the state of things
7 behind the scenes. (T. 32,532) He had been recom-
8 mended by Senior Statesmen and his character was
9 vouched for by those who knew him, but with the
10 majority it is stated he was not known, as with them
11 he had no intimate relations (T. 31,098, 31,099 and
12 31,100).

13 At the time of his Imperial audience he was
14 given the mandate to form a Cabinet in cooperation
15 with Admiral YONAI (T. 11,383). YONAI was a man
16 noted for peaceful policies and who has testified be-
17 fore this Tribunal and who has not been charged with
18 any crime although he was Joint Premier (T. 29,266)
19 as well as Minister of the Navy (T. 38,925) in the
20 KOISO-YONAI Cabinet, Navy Minister in the HIRANUMA
21 Cabinet, and Premier of the YONAI Cabinet (Ex. 102),
22 in 1940 when KOISO was Overseas Minister (T. 29,266)
23 (FF-113) (K-3, T. 40,539).

24 (2) The policy of the KOISO-YONAI Cabinet
25 with respect to measures to cope with the situation

1 was, first of all, tactfully to create a state of
2 national unity and launch headlong on peace negotia-
3 tion (11-50) at the earliest opportune moment.
4 (T. 38,928). At the same time peace campaigns were
5 to be conducted with China (T. 32,539 to 32,543) on
6 one hand (11-44), and on the other hand a way was to
7 be opened for an overall peace through Soviet Russia.
8 (T. 32,539). T. 32,54203). All government adminis-
9 trative measures were advanced along this line of
10 policy. (KANAKA, T. 32,543, 32,535). For this pur-
11 pose, they requested that the Supreme Council for the
12 Direction of War be established. Prosecutor Horwitz
13 declared in his opening statement (T. 681) (13 June
14 1946) it was established to effect harmony and
15 cooperation between the Government and the High Com-
16 mand, and was formatively given authority by Imperial
17 Order. It was testified to by defense witness FUJITA,
18 Tsuguo (T. 17,557) that the above organization was
19 different in this respect to the former Liaison
20 Conferences of the TOJO Cabinet. There was also a
21 difference in that of purpose. KOISO, in asking for
22 this organization, had the general purpose to devise
23 a method for bringing about an end to hostilities
24 by closer control and coordination of the policies
25 of the Supreme Command with those of the Government

1 and, by gaining knowledge of military plans, to pre-
2 vent interference with the policy of his Cabinet to
3 bring about peace as desired.

4 The council was established to further the
5 KOISO-YONAI Cabinet policies and measures for ending
6 hostilities. However, this council for direction of
7 war did not come up to the expectation of Premiers
8 KOISO or YONAI (T. 32,537-8), and the High Command
9 was prone to develop into unexpected directions
10 without the least knowledge of the Premier (T. 32,537-9).

11 Reduction of Japan's war potential was
12 accelerated owing to increasing damages by bombing
13 on manufacturing establishments and cities (T. 32,549).
14 Still it seemed impossible to realize the object
15 (T. 32,538) of administrative policies by attending
16 this council alone (KOISO, T. 32,255). Thereupon,
17 KOISO asked (T. 32,538), on 19 March 1945, to be
18 authorized to attend the Imperial Headquarters Con-
19 ference and received, by Imperial Rescript, such
20 authority about ten days before his Cabinet resigned.
21 KOISO wanted to learn the plans of the High Command
22 and be able to know the situations and developments
23 of operations, and to try to coordinate their actions
24 in accordance with government policy, but during said
25 ten days he was still not permitted, on the three

1 occasions (T. 32,539) he attended Imperial General
2 Headquarters Staff meetings, to take part in discus-
3 sions or learn about their plans or matters pertaining
4 to military operations and tactics (T. 32,538).

5 THE PRESIDENT: We will recess until one-
6 thirty.

7 (Hereupon, at 1200, a recess
8 was taken.)

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AFTERNOON SESSION

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1 The Tribunal met, pursuant to recess, at 1330.

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3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now in session.

5 THE PRESIDENT: Captain Brooks.

6 MR. BROOKS: Resuming the reading on page 95.

7
8 Therefore, this move also failed to contri-
9 bute anything to KOISO's efforts to place control and
10 power to bring about peace into the government's hands
11 in order to put an end to the hostilities and coordi-
12 nate and control the fighting power and its action in
13 respect thereto. (KOISO, T. 32,255 to 32,256).

14 In this connection we wish to remind the
15 Tribunal of the fact that KOISO had brought before the
16 Supreme Council for Direction of War his plan for
17 peace negotiations with Soviet Russia and China as a
18 means to concluding the war. (TANAKA, T. 32,539, 32,541
19 and 32,542; KOISO, T. 32,253; KIDO, T. 31,115).

20 Thereupon, KOISO, to solve this deadlock,
21 asked authority to hold concurrently the portfolio of
22 the Minister of War and Premier. By this plan he
23 expected to grasp correctly the actual situation and
24 a voice in control of the High Command so that he might
25 be able, at the earliest possible moment, to carry into

1 effect the policy of his cabinet to develop and suc-
2 cessfully launch and conclude peace. However, this
3 plan required him to hold the War Ministership con-
4 currently which was only possible if the three big
5 chiefs of Army would approve his return to active mili-
6 tary service so as to qualify KOISO for the War Minis-
7 try. This met with their opposition as the Army knew
8 that as War Minister KOISO would be able to attend
9 High Command meetings and learn of operational plans
10 and conditions and would gain more control towards
11 furthering peace efforts which some disapproved of
12 because of first one reason or another. As a result,
13 the KOISO Cabinet resigned en bloc and gave up their
14 struggle after recommending a cabinet be given power
15 and control sufficient to end the hostilities. (KOISO,
16 T. 32,256, T. 32,260 to 32,263, and T. 32,528 to
17 32,544).

18 (3) The prosecution pointed out that KOISO
19 was President of the Imperial Rule Assistance Associa-
20 tion. However, in 1940 he was against its creation
21 in the YONAI Cabinet. (T. 41,326). As Prime Minister,
22 he was made ex officio the President of the association
23 in accordance with the rules of said association. The
24 said association had been formed in 1940 by the KOROYE
25 Cabinet. (T. 19,797). (T. 1,642).

Immediately after assumption of the Premiership, KOISO sought to dissolve the Imperial Rule Assistance Association and to gain the confidence of the people by restoring political parties. So although at the outset he accepted the presidency of the association, he did so with this purpose in mind, because its regulations provided that it was to be filled as a matter of course by the Prime Minister, whoever he may be. This had an advantage for KOISO, as a preliminary step to bring about its dissolution, because he learned that the President was empowered to revise the regulations and even to order its dissolution.

(T. 19,797-8)

Under the rules, the Vice President handled the management and was actually in full control of its affairs. However, KOISO intended to use his power under the rules and his position as President to bring about its dissolution for the purpose of restoring political parties to power. (T. 32,922, 32,925)

(4) During his tenure as Prime Minister, KOISO, realizing, immediately after the formation of his cabinet, that the situation both at home and abroad no longer permitted of any deferment, sought at once to strengthen Japan's diplomatic personnel in the Soviet Union. He desired thereby to advance preparations for

1 peace with the United States and Great Britain through
2 the medium of Russia. He also commenced steps to
3 urge peace between Germany and Russia. On the other
4 hand, he also sought to make peace with the Chinese
5 Government in Chungking through the medium of the
6 Nanking Regime and thence to expand the effort to con-
7 clude peace with the United States and Great Britain.
8 However, because of Russian rejection of peace over-
9 tures and because of disagreement with certain mem-
10 bers of his Cabinet over his endeavors for peace, he
11 did not make any progress in spite of his anxious ef-
12 forts. The Tribunal's attention is especially called
13 to this situation and the other one next described
14 which caused KOISO's Cabinet to fall. KOISO tried to
15 determine upon an opportune moment to effect peace
16 speedily. Direct knowledge of the true state of
17 Japan's fighting strength and the plans of the High
18 Command were necessary. He could gain this only by
19 holding concurrently the post of War Minister. How-
20 ever, the question of his becoming concurrently the
21 War Minister met with such opposition from the Army,
22 it thereby rendered impossible the realization of what
23 he had in mind. Thus, he could only suggest and pray
24 for the appearance of a strong cabinet capable of
25 carrying out what he had intended and hoped to do.

1 He was compelled, due to such opposition from the
2 Army Big Three and certain members of his cabinet, to
3 resign. The actions of KOISO while Prime Minister
4 were consistently directed toward the end of grasping
5 an opportunity to terminate the war while endeavoring
6 to effect coordination between the government and the
7 High Command. All other measures were incidental to
8 the attainment of the main objective and it was be-
9 cause the final means to attain it was obstructed
10 by others that he was compelled to quit his post
11 as the efforts for peace by his cabinet were still
12 premature in that sufficient cooperation at that stage
13 could not be obtained, and those in control in the
14 High Command had yet to receive the atom bomb and
15 Imperial Order to shake loose their tenacious grasping
16 for a victorious conclusion of the holocaust of war.
17 (T. 31,242-8)

18 (5) We submit KOISO is not amenable in any
19 way to the evidence produced against him under Counts
20 7 to 13, 16, 29 to 31, and 35 of the Indictment.

21 (6) In relation to LL-45 and LL-46, the
22 prosecution, under paragraph LL-45 of their summation,
23 state that KOISO was on April 21, 1942 ordered a mem-
24 ber of the Committee for the Establishment of Greater
25 East Asia (T. 735) but he was relieved June 20, 1942.

1 They contend, under paragraph LL-46, that "In accept-
2 ing a place on the committee to effectuate the organ-
3 ization to realize the aggressive action proposed in the
4 conquest or domination of sovereign territories, KOISO
5 made his position with the militarists crystal clear."
6 However, this is mere presumption. Also, the matters
7 complained of by the prosecution were formulated in
8 January 1942 (T. 11,339, LL-45) and not in the period
9 of two months he was nominally a member.

10 When KOISO was ordered on April 21, 1942 a
11 member of the Committee for the Establishment of Great-
12 er East Asia, he was not connected with any government
13 office at all and was a civilian. (Ex. 114) He was
14 one of a few hundred members of the committee (T.32,428)
15 and his membership was in name only. He never attended
16 or joined any alleged deliberation of alleged aggres-
17 sive actions against Greater East Asia, and, further-
18 more, he was relieved of membership on June 20, 1942.
19 (T. 735)

20
21 (Ex. 114) Moreover, the prosecution adduced
22 no evidence at all to prove that KOISO conspired with
23 any so-called militaristic clique with respect to
24 aggressive actions, and, therefore, the above allega-
25 tion is a mere conclusion based upon mistaken specula-
tion on the part of the prosecution.

1 (7) The prosecution's original contention
2 was that they intended to establish that all the de-
3 fendants between January, 1928 and September, 1945,
4 and the Japanese Government which came into power on
5 13 December 1931, (Appendix A, Section 1, Indictment)
6 and all subsequent Japanese Governments for waging
7 consistent wars of aggressions, conspired and com-
8 mitted unlawful acts. However, the prosecutors' proof
9 was contrary to this assumption and it became apparent
10 that they would soon reach an impasse. Thereupon,
11 the prosecution began to shift away from their orig-
12 inal theory of guilt and conspiracy of all cabinets
13 and persons and took great pains to make their conten-
14 tions look theoretically consistent with evidence which
15 clearly refuted their original theory. We find that
16 many new and unreasonable theories of international
17 and criminal law have been put forth; they insist that
18 such law is alive and progresses. They have suggested
19 interpretations be made to avoid making ex post facto
20 law; but in fact such interpretations would create
21 new law and establish international law by untried
22 and unheard of theories of practice.

23
24 The Chief Prosecutor took pains to state var-
25 ious definitions on common conspiracy in his opening
statement and they have alleged on certain premises

1 that KOISO could be involved by inference and presump-
2 tion and should be made responsible and accountable for
3 acts of utter strangers to said accused who were al-
4 leged to be co-conspirators.

5 We submit the prosecutors not being versed in
6 Oriental affairs, especially in those of Japan, misun-
7 derstood or overestimated evidence considered unfavor-
8 able to the accused because much of such evidence and
9 theory has been supplied by Communistic and other mal-
10 content elements following the close of the war. Also
11 a sentiment of retaliation was still fresh and war-
12 time propaganda had played its part to create prejudice
13 and distort perception as to the true state of facts.
14 It stands to reason that the very misconceptions which
15 existed among statesmen gradually were embodied in
16 propaganda, but the folly thereof cannot withstand
17 comparison with the evidence.

18 We submit it is clear that their premises
19 in many instances have been based upon an unreasonable
20 assumption and that much evidence introduced under
21 such conditions was of no assistance to their theory
22 of guilt or conspiracy.

23 It is a mistake on the part of the prosecu-
24 tion to presume that all military actions taken by
25 Japan between January 1928 and September 1945 were

1 consistent only with a war of aggression under a com-
2 mon conspiracy or common plan therefor. Because the
3 defendant KOISO held public office during a certain
4 period the prosecution claims that it is natural to
5 hold him responsible, irrespective of his duties, for
6 what the prosecution allege to be unlawful acts or
7 unlawful conduct of rank strangers who are labelled as
8 being inspired by an alleged common purpose or plan.
9 Would this not truly be an exceedingly arbitrary pro-
10 cedure to punish an accused based on a presumption,
11 and even if there existed a code of very broad crimin-
12 al international law, would such a theory of justice
13 be approved or even if a construction were permitted
14 of international treaties and assurances in line with
15 their other theories, are we not asked to base too
16 many presumptions one on the other?

17 Is not each independent nation at liberty,
18 in consideration of prevailing international situa-
19 tions, to adjust her military preparations according
20 to her national strength from the point of view of her
21 needs for self-defense without making public officials
22 responsible for the use of such materials by others
23 over whom they have no control?
24

25 Especially, where international relations
are so complicated that a mere unforeseen incident is

1 liable to lead to a war, can reasonable grounds for
2 unlawfulness exist because certain officials ask for
3 or assist in the military preparations by a nation
4 according to her beliefs of what is proper for de-
5 fense and commensurate with her national strength, and,
6 if so, are others who failed to prevent such prepara-
7 tions or successfully to oppose their use to be respon-
8 sible because of their lack of foresight and inability
9 in their official position?

10 Do not all nations find it still necessary
11 to consider appropriate plans and preparations for
12 self-defense? Military preparedness is not unlawful,
13 we submit, and the use of such military force as has
14 been prepared to meet a given situation endangering
15 national interests has not been considered unlawful.
16 How will public officials of the future accept this
17 new responsibility? Who will want to take part in
18 the Military Service, Diplomatic Service, or in other
19 branches of the government if mere position and lack
20 of foresight can make one responsible for the acts
21 of total strangers miles away?

22
23 Mr. Justice Jackson, in the Nuernberg case,
24 contended that the defendants were indicted not be-
25 cause they conducted a war, but because they lead the
country into a war. We submit the prosecution evidence

1 failed to establish that KOISO was guilty of leading
2 his country into a war either in 1931, 1937, 1941, or
3 at any other time. Has not the prosecution apparently
4 adopted the Nuernberg theory? (K-3, T. 40,539)

5 (a) The Japanese Government's action in
6 assisting Manchukuo after she became what was believed
7 to be an independent state, in accordance with the
8 Japan-Manchukuo Treaty, should not make officers in
9 military service, acting under orders of such govern-
10 ment, responsible for any illegal act, especially an
11 officer occupying a secondary administrative position
12 like KOISO held.

13 Moreover, was not KOISO justified in believing
14 in the legality of the independence movement of Man-
15 chukuo? It was "de facto" as he thought, and his con-
16 victions were confirmed or strengthened when it was
17 later recognized by over ten other western independent
18 nations.

19
20 Since the destruction of the State of Manchu-
21 kup have the people of Manchukuo gladly accepted this
22 change and gone back peacefully to the folds of the
23 Chiang Kai-shek Government?

24 Looked honestly in the face, the independence
25 of Manchuria was brought forward by the inhabitants of
the five races therein, and today's current action in

1 said area for independence is at least indicative of
2 the spontaneity of other original movements therefor.

3 (b) Next, as to the Sino-Japanese Incident,
4 the Central Government of China professed desire to
5 regain, by fair means or foul, certain national rights
6 with respect to which Japan by treaty was entitled to
7 exercise certain privileges. Did such action contribute
8 to this incident? Was further aggravation and spread
9 not due to the program which was anti-Japanese? Did
10 not such anti-foreign programs lead to destroying
11 Japanese lives and property in an effort to drive out
12 of China all Japanese interests and Japanese people
13 before such hostilities broke out, even previous to
14 1931 and 1927?
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1 Tension had increased between these countries
2 as a result of a number of Japanese being murdered and
3 Japanese properties being plundered or destroyed.
4 Evidence adduced before the Tribunal shows that the
5 incident developed and extended because of continued
6 activity by Chinese forces and groups.

7 During the period KOISO believed that the
8 fundamental national policy of Japan was pacifism
9 aimed at the maintenance of peace in the Orient. Is
10 a citizen to doubt or can he be justified in placing
11 reliance on the statements made by his government which
12 evidenced such intentions to preserve world peace?
13 Does the prosecution wish to establish that a citizen
14 cannot depend on his own government's assurances?
15 Should we establish that as a precedent? Shall an
16 accused be held responsible for the actions of those
17 in official positions unless said accused regardless
18 of his own official position makes a record of his
19 opposition and preserves it for perpetuity or at least
20 20 years to use for his defense?

21 The Chinese Communists have become known
22 for their intrigues and their skill in disseminating
23 propaganda. Japan was always defeated by such Chinese
24 in the war of propaganda and, as a result, many of the
25 peoples of the world have been taken in by Chinese

1 Communistic propaganda and overlooked many of their
2 activities violating the legal rights of Japan and of
3 its citizens. Of course, there were other reasons which
4 added to the difficulty, but many of which grew out of
5 this oversight led eventually to hostilities between
6 Japan and the Allied Powers; some were also dealt with
7 in general summations that were of an ultra-nationalistic
8 background, but these were also encouraged by Chinese
9 Communists, and we submit both Chinese groups fighting
10 today for control, thought by uniting against Japanese
11 interests they would not only gain what Japan would
12 lose but would possibly each have an opportunity to
13 wrest control of China from the other in said process
14 or gain weapons and assistance from other allies.

15 (c) Does the evidence not fail to prove
16 common conspiracy or aggressive intentions on the part
17 of KOISO?

18 The Tribunal is aware, there was a clear
19 demarcation between general state affairs and those of
20 the High Command according to the provisions of the
21 Japanese Constitution.

22 Could those who had a strong political position
23 direct and administer the entire national power in
24 any way and manner they desired?

25 Was it actually impossible to control Japan's

1 national and foreign policies, to lead the national
2 policy at will and to disregard the national interests
3 and the welfare of the people? Every individual
4 cabinet officer by failing to vote in favor of a
5 measure could defeat it at least temporarily or cause
6 the downfall of the cabinet by refusing to either
7 approve or individually resign; action opposing the
8 trend to alliance and war continuation was taken by
9 KOISO and YONAI with others who were inclined for
10 peace on at least two occasions of record in their
11 two cabinets. (T. 41,326, T. 31,248).

12 Officers and men of military service are the
13 ones first to suffer in carrying out the orders of
14 their governments, and it is such officers and men who
15 should be and generally are the greatest advocates of
16 peace for they have a close appreciation of the
17 horrors of war. KOISO and YONAI were labelled as
18 peace advocates. The Senior Statesman especially
19 (T. 31,134) stated this critically, of the efforts
20 to end hostilities and establish peace, of KOISO and
21 YONAI in 1945. (EE-133, Ex. 1282, T. 11,390, Ex. 3340,
22 T. 31,124, 31,134). KOISO's efforts to restore peace
23 in the Pacific War, to prevent the spread of the
24 Manchurian Incident and rash action by the Kwantung
25 Army when it was tense under the strain of many incidents

1 which occurred in China, his oppositions to the Tri-
2 partite Alliance in both the HIRANUMA and YONAI
3 Cabinets does indicate that he was not at any time
4 motivated by aggressive intent, or design to conspire
5 to cause hostilities and is testified to by Major
6 General Piggott (T. 32,546) and others.

7 The Allied Forces carried out unlimited and
8 indiscriminate bombing not only in the battlefield
9 but also over the territories of Japan, as the result
10 of which the war damage suffered, as the Tribunal is
11 well aware, was exceedingly serious. After the
12 nation had been led into war and the TOJO Cabinet
13 fell, KOISO was ordered by his Emperor to form a
14 government to protect Japanese interests. Does this
15 taking of office as Premier label KOISO as a member
16 of a militaristic clique? He was not even qualified
17 to become War Minister for he was no longer in active
18 service. Was it illegal and improper? If so, in
19 event of another war, who will be inclined to take up
20 matters of state and try to terminate hostilities?

22 Japan was in a position in which she was to
23 suffer complete annihilation, as the Allies had broad-
24 cast, unless she quickly took steps for peace or found
25 further arms for her defense. Some statesmen had to
~~be selected to lead Japan back to her former more~~

1 peaceful position. KOISO and YONAI set up the joint
2 cabinet and did their best under difficult circum-
3 stances. YONAI as joint Premier and Navy Minister
4 and a former Premier of the YONAI Cabinet was not
5 indicted, so we presume and submit that the position
6 he held should not make KOISO automatically responsible
7 for the conduct of others who had led the nation into
8 war, and we feel the prosecution had failed to grasp
9 the facts about KOISO and YONAI because they had been
10 misled by the mistranslations and vicious rumors about
11 KOISO and the March Incident (K-3, T. 40,539).

12
13 SECTION 9 - RELATING TO COUNT 1, COUNTS 44,
14 48 to 51, and 53 to 55 - EDUCATION, MURDER
15 PRISONERS OF WAR.

16 (1) The prosecution dropped Counts 44 and
17 53 at paragraph C-18 of their summation. Now as to
18 the other counts of the Indictment under Groups 2,
19 Murder, we find KOISO is only named in Counts 48, 49,
20 50 and 51. As to the Republic of China and the region
21 of the Khalkhin-Gol River we have already made our
22 submission thereon under Section 3 and 7 above, re-
23 spectively, relating to the Republic of China and the
24 Union of Soviet Socialist Republics, and we submit
25 the prosecution have failed to show any connection

1 of the accused with such charges.

2 (2) As to the remaining counts of the
3 Indictment under Group 3, conventional war crimes:
4 KOISO was charged in Counts 54 and 55, together with
5 all the other defendants.

6 Of the matters mentioned in said counts,
7 our refutation has been by KOISO's testimony
8 (T. 32,246) and TANAKA's testimony (T. 32,544) to
9 the effect that KOISO never ordered, authorized or
10 permitted anyone to commit any illegal act and he
11 had no knowledge as to or responsibility over alleged
12 violations of the laws of war nor legal duty in regard
13 thereto.

14 (a) The "notification on dealing with
15 prisoners of war" from the Vice Minister of War to
16 the Chief of Staff of the Taiwan Army Headquarters
17 under date of March 17, 1945 (Ex. 2012 and 2013) and
18 the "Notification Concerning Work of Prisoners of war"
19 from the War Ministry to the Chief of Staff of the
20 Taiwan Army Headquarters under date of March 16, 1945
21 (Ex. 2014), were documents, relating to prisoners of
22 war, intended to be used exclusively within Army
23 circles. TOJO, who as a former War Minister should
24 know, admitted that these documents had nothing to do
25 with the cabinet (T. 36,839) and they were matters

1 dealing with questions on which the Premier was not
2 in a position to receive any report. (KOISO, T. 32,246)
3 Foreign Minister SHIGEMITSU also did not discuss
4 prisoners of war matters with KOISO as was testified
5 by SUZUKI (T. 38,914), and TANAKA (T. 32,544). The
6 prosecution admit this in paragraph SS-33 (b) of their
7 summation.

8 (b) Of the 13 letters (Ex. 2016-A) exchanged
9 between the Swiss Minister and the Japanese Foreign
10 Minister with respect to visits to prisoners of war,
11 etc., which bore a date while KOISO was Prime Minister,
12 five were dealt with by the Foreign Minister before
13 the cabinet resigned. However, no report was made
14 on these matters to the Prime Minister by the Foreign
15 Office. (TANAKA, T. 32,544) (SUZUKI, T. 38,914)

16 (c) As to 8 documents (Ex. 2022-A) relating
17 to mistreatment of prisoners of war or protests ex-
18 changed between the Japanese Foreign Minister and the
19 Swiss Minister which were received during the time
20 KOISO was Prime Minister, the Foreign Minister before
21 the Cabinet resigned had answered or made report on
22 four of them. However no report was made on these
23 matters to the Cabinet by the Foreign Office (TANAKA,
24 T. 32,544), or to Premier KOISO (T. 38,914).

25 (d) Prisoner of war matters (LL-52 to 56)

1 were in charge of the Minister of War who had a section
2 to handle such matters through the Channels of Command.
3 This was made clear by TOJO (T. 36,819), KOISO
4 (T. 32,246), TANAKA (T. 32,543) and the explanation
5 of Prosecutor Nolan concerning the administration of
6 prisoners of war. (T. 594 to 597) All of which clearly
7 show that these were matters outside the responsibility
8 of the Prime Minister (T. 14,440).

9 (e) The protest and demand for a reply sent
10 to the Japanese Foreign Minister by the Swiss Minister
11 (Ex. 2092) on June 5, 1944, with regard to illegal
12 attacks on British merchant ships by torpedoes of
13 Japanese submarines had nothing to do with KOISO as
14 it took place before he became Prime Minister, and
15 while he was still Governor-General of Korea. More-
16 over, open submarine warfare had been declared by the
17 Allied governments as is a matter of common knowledge
18 and this was declared by the Nuernberg court to estop
19 any action on charges related thereto. Furthermore,
20 KOISO had no knowledge thereof (T. 32,544, 38,914).

21 (f) Furthermore, with respect to illegal
22 attacks by Japanese submarines these were matters
23 coming under the exclusive control of the High
24 Command.
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(g) Finally, the prosecution alleges that "matters concerning atrocities and mistreatment of prisoners of war by Japanese authorities were well known to the public." Before KOISO was appointed Prime Minister, however, KOISO was Governor-General of KOREA (May 1942 to July 1944) and was at Koijo (Seoul), Korea, engaged with administrative duties, and KOISO testified he did not know of such facts as alleged. (T. 32247). At that time, the Japanese Government had prohibited both officials and civilians from possessing or using short-wave radio sets. Therefore, except for the very few authorized officials dealing with such matters no one else had an opportunity to learn of such matters because of such rigid censorship. It was more than natural, therefore, as KOISO testified (T. 32247) that he did not know or even suspect as to the true condition of prisoners of war in Japan, still less so of those in places outside of Japan. TANAKA, Ryukichi's testimony and that by SUZUKI, Tadakatsu clearly shows that the treatment and supply of food, etc. to prisoners of war were handled, even after KOISO became Prime Minister, by the sections under the War Minister or by the High Command and protests and requests by foreign countries were forwarded by the Foreign Office directly to the

1 Bureaus or Sections concerned for action. (SUZUKI,
2 T. 12831 and 38914); (TANAKA, T. 14286 to 14287).

3 It is further stated that the question relating to
4 the treatment of prisoners of war was never put
5 before the Cabinet and no report whatever was re-
6 ceived by KOISO on any other occasion as well.
7 (TANAKA, T. 32544); (KOISO, T. 32246); SUZUKI, T.
8 38914). Par. SS-33 (b)).

9 (3) We submit KOISO is not amenable in any
10 way to the evidence produced against him under Counts
11 44 to 51 and 53 to 55 of the Indictment.

12 (4) The prosecution, under paragraph LL-42
13 of their summation, state that "It was while KOISO
14 was Governor General of KOREA (29 May 1942 to 22 July
15 1944) that British POW arrived in Korea on 13 August
16 1942, and were publicly paraded and degraded (T.
17 14522) although he was not Governor General when this
18 matter was arranged. . ." The treatment of prisoners
19 of war at that time was entirely under the control of
20 the Commander in Chief of the Korean Army and the
21 Governor General of Korea had no relations with them
22 at all, which fact was made clear by the testimony of
23 HIRAHII (T. 20021) and ONO (T. 32920). Furthermore,
24 the responsibility for treatment of prisoners of war
25 in Korea was not in the government but was in the army

1 General Staff, which fact was made clear by the testi-
2 rony of witness TOJO (T. 36839).

3 (5) Relating to Count 1, Appendix A, Section
4 6):

5 In Appendix A, Section 6 of the Indictment,
6 the last paragraph states the educational system,
7 civil, military and naval, were used to inculcate a
8 spirit of totalitarianism, aggression, desire for war,
9 cruelty and hatred of potential enemies. The Chief
10 Prosecutor, in his opening statement (T. 436) stated
11 as follows: "The military in Japan had sponsored,
12 organized and put into effect in the public school
13 system of Japan a program designed to instill mili-
14 tary spirit in the youth of Japan."

15 However, there is no evidence connecting
16 KOISO with any such alleged program of education or
17 with conspiring with anyone else to carry out such
18 a program. A natural result of evidence presented
19 in this case leads one to feel there was much to be
20 desired in the proper guidance of young men. In
21 other words, this education system or some other system
22 may have had shortcomings. However, in the case of
23 the education system of the allies based on democracy
24 does that also explain the improper actions of certain
25 young men in their armies of which we are all aware.

1 We submit that it does not in either case. Certain
2 crimes occur even in peace time and certain people
3 have criminal tendencies which become more pronounced
4 as the restraining influence of the police power be-
5 comes unstable or unlikely of being able to detect
6 their irregularities. However, many people fail to
7 realize that actions in the theatre of war make more
8 pronounced such abnormal behavior because of the
9 breakdown of the normal safeguards. Therefore, crime
10 will prevail wherever there are armies of men and the
11 education system we submit does not affect this
12 condition enough to prevent improper actions by
13 citizens of any country. The prosecution, under the
14 misapprehension that an education system could be
15 solely responsible for instilling militaristic and
16 aggressive teachings in the mind of Japanese, repeatedly
17 charged that said system caused aggression in Man-
18 churia, in China and other areas, and cruelty, atroc-
19 ities and hatred of potential enemies and contended as
20 if Japan had committed unlawful acts due to ultra-
21 nationalistic education even though educational reforms
22 were not instituted very markedly in a military sense
23 until TOJO's time in 1940. However, on the basis
24 of their presumption, they charge that the defendants
25 were guilty of a common conspiracy and liable therefore

1 for the acts of other accused, most of whom were
2 strangers to each other. We have been told quite
3 correctly several times during the proceedings of
4 this court that because other countries or people com-
5 mitted certain alleged unlawful acts does not permit
6 Japan to repeat the same offense. However, in inter-
7 national affairs we find at a glance at the foreign
8 policies of various countries they all relate to the
9 actions of other nations whether lawful or unlawful
10 which is sufficient to show that we must also con-
11 sider as background the actions of countries in
12 Europe and in the Far East. The invasion of Asia
13 by European countries and its influence; the dangers
14 to the peace in the Far East which were not apparent
15 to all the peoples of the world at the time were
16 apparent to or believed to be a danger by many Japanese
17 statesmen twenty years ago. The prosecution slide over
18 these points and do not seem to realize it took two or
19 more to make a quarrel and condemned as mere propa-
20 ganda or as suspicions that which was based on
21 evidence that a quarrel was being provoked with Japan
22 by opponents who violated the provisions of treaties
23 and that normal relationships became strained or
24 broken off with no diplomatic reasons justifying such
25 conduct, from the viewpoint of the statesmen at that

time.

1 Can the educational system be blamed for
2 the actions taken by Japan declared to be irregular
3 and can her statesmen be tried without first consider-
4 ing whether their motives were improper and the extent
5 to which the actions of other countries were justified
6 and their motives be revealed for taking certain
7 provocative actions? Many past actions though now
8 easily understood in light of later developments were
9 at the time not clear and were very complex and diffi-
10 cult of solution. Of course hindsight is better than
11 foresight and looking back many matters presumed to
12 exist as dangers or plots which are now inferred from
13 a certain pattern of events may not be based on fact
14 at all but upon suspicion or presumption alone. At
15 the time good faith may well have been present on
16 both sides, even though errors of judgment and dif-
17 ferences as to methods of solution occurred.

19 Could it not be other countries were sus-
20 pected of poisoning the mind of their people with
21 harmful ideas of racial superiority that created this
22 danger to the peace of the Orient? There was just as
23 logical and reasonable a pattern if one is fair in
24 looking backward at history for fearing both the
25 Imperialism of capitalism and of Communism and for

1 believing it reasonable to commence building a defense
2 against it, and the bloc economies, racial prejudices
3 and ideologies of that time. This is not a matter
4 which is unreasonable or beyond the power of compre-
5 hension or discernment of only Japanese. We respect-
6 fully submit to the fair consideration of the honor-
7 able members of this Tribunal such evidence and the
8 chain of past activities favored these fears and con-
9 clusions which appeared reasonable and logical to
10 leaders in Japan at that time, who from fear and
11 suspicion prepared to meet such dangers, real or
12 fancied.

13 The prosecution at transcript pages 459-460
14 stated as follows: "It is no longer a theory but a
15 fact, as has been so well demonstrated by recent
16 scientific developments, that another war will mean
17 the end of civilization, the destruction of civiliza-
18 tion." We submit civilization without justice would
19 be a paradox. The prosecution further state: "To
20 those who observe and note these proceedings, we can say
21 only we shall proceed without thought of criticism or
22 commendation. That is that our proceedings shall be
23 in full conformity with the dictates of justice itself."
24

25 We submit the safety and security of posterity
demands that the above procedure be practiced and is a

1 policy taught in legal institutions of learning of all
2 nations. Indeed, another war in the future may not be
3 such a simple affair as the destruction of civiliza-
4 tion. The use of atomic power in war will not be the
5 only danger, for a more dreadful paradox may appear
6 in the future, because the prosecution without thought
7 of criticism or commendation ask this Tribunal to
8 exercise the power to legislate under certain theories
9 of interpretation, to hold under new theories of law
10 certain defendants responsible for certain alleged
11 crimes, in order to establish certain precedents.
12 The prosecution contention advocates justice, but
13 hearsay evidence rules and technical objections
14 and technical mechanical advantages and disadvantages
15 faced herein carry all the known dangers and preju-
16 dices to orderly administration of justice that have
17 been pointed out in schools of law for years. The
18 accused has been arraigned for trial accused of alleged
19 crimes and responsibilities under theories of law that
20 cannot be found under any legal or educational system
21 of any nation of the world, let alone as a violation
22 of an international criminal code which should be a
23 basic necessity for complete compliance with justice.
24 We are asked to step back in the international field
25 still further into the dark ages of law and learning

1 when ex post facto law and rule by force, rather than
2 by reason, caused untold misery and suffering for
3 centuries. Are we to lose the progress of education
4 and justice in the international field and thereby
5 weaken even the greater progress of our domestic con-
6 cept of justice, merely to set precedents that may be
7 illogical and unreasonable since they are by reason of
8 neglect, not clearly defined, studied and codified
9 into necessary and proper international laws, but
10 result from the hasty actions of academicians. If
11 the prosecution contention is supported and verdict
12 given accordingly, it might mean to many nations of
13 the world that war in the future must be won without
14 regard to its method. Is the right and manner of
15 imposing new theories of justice, etc. to be left to
16 rest in each new case with the victor alone? This
17 could lead to the destruction of entire races, groups
18 or classes of people and instead of this trial being
19 a war deterrent, such precedents as set here might
20 incite even greater horrors of war and later be used
21 to justify action based on similarly created precedents
22 by a victorious nation aroused by the passion and
23 prejudice of war. Thus a trial whose purpose is to
24 prevent wars may become a notice to encourage more
25 horrible wars contrary to its role. The saying of

1 a wise philosopher that man is a political animal and
2 a warlike animal may be further strengthened. History
3 teaches there is no assurance when the nations and
4 races that are now victor nations may not find them-
5 selves later in a defeated or most pitiable condition.
6 For these reasons not only are justice and fairness
7 necessary but solemn deliberation, confiscation and
8 permanent rules and machinery are necessary before
9 setting such legal precedents. The members of this
10 Tribunal who represent the allied nations in these
11 temporary proceedings are in a position to be able
12 to save the world from another war by recognizing
13 fairly the mistakes of all parties concerned and the
14 true weakness of its legal background and conception
15 and point out the necessity for world peace to be
16 established firmly by a known codified body of inter-
17 national law adopted, ratified and made effective in
18 customary form under rules of justice and under pre-
19 scribed forms of practice and procedure universally
20 recognized and adopted as just by their acceptance
21 and use in national systems of jurisprudence. It will
22 be most fortunate, we hear diplomats, military leaders
23 and officials of government state, if the action of
24 this Tribunal does not lead to improper and dangerous
25 precedents being established to hound and damage

innocent people in the future. If we make such
1 persons feel insecure in carrying out their duties,
2 overly careful of personal responsibility, the inde-
3 cision and vacillation or relinquishment of positions
4 will be detrimental to sound government. Japan's
5 continental policy and the actions taken by certain
6 defendants may have awakened the world to the need for
7 laying the proper foundation for settlement of world
8 problems; for prevention of all wars; for the emanci-
9 pation of and granting equal rights to all races; for
10 providing proper attention to world economic coopera-
11 tion; and for preventing economic insecurity by pro-
12 viding protection from the "grab nores" and allaying
13 suspicion due to lack of understanding or lack of
14 sympathy with the problems of the "have nots" from
15 causing war in the future. We submit, therefore, that
16 all educational systems may have failed to teach and
17 realize from the lessons of history the dangers from
18 unbridled imperialism, and oppression of races because
19 of color, creed, prejudice or a desire to exploit
20 rights and resources needed without considering legal
21 and ethical rights and necessities of the possessors
22 thereof.
23
24

25 War will only be prevented, we submit, not
by a temporary court's decision, but only when all

1 wars are outlawed, civil, aggressive or defensive, and
2 all killing in active combat be by statute, national
3 and international defined as murder. Only progressive
4 legislation, both national and international, outlawing,
5 progressively, the use, manufacture or possession of
6 weapons of war and prohibiting organizing and training
7 of military personnel as criminal, will end such
8 hostilities. Then if these actions are criminal, by
9 such criminal statutes, said crimes can be prevented
10 by proper supervision of the regular police systems
11 in each nation carrying out their duties to uphold
12 both national and international law, the fulfillment of
13 their duties being insured by an international police
14 commission authorized to maintain police inspectors
15 representing all nations in any area of the world.
16 Then with such proper permanent machinery and properly
17 established permanent courts for dispensing interna-
18 tional justice it will be safe to establish legal
19 precedents based on studied and internationally ap-
20 proved laws and regulations for ensuring world peace,
21 freedom, security and prosperity to an enlightened
22 world. Then we will be free from the terrible expense
23 and dangers from maintaining military forces and
24 equipment. Then no foreign ideology can be forced on
25 an unwilling people, but acceptance will depend on

1 proven merit consistent with the needs, desires, social
2 and political factors of the people in a given area of
3 the world.

4 We submit, your Honors, that if the need for
5 permanent international machinery and a clearly pub-
6 lished code of international criminal law and procedure
7 can be pointed out to the world it may arouse states-
8 men from their lethargy and alone justify the time and
9 expense of these proceedings. The findings of not
10 guilty based on lack of adequate legal jurisdiction
11 may point the way to the proper legal steps to follow.

12 THE PRESIDENT: Captain Brooks, this is a
13 political harangue, not a legal argument. You know
14 that we cannot entertain such things as you are putting
15 to us. We must decide our jurisdiction according to
16 law, international law.

17 However, proceed. I just want to point out
18 that we realize that you are exceeding all proper
19 bounds in this summation.

20 MR. BROOKS: I am attempting to meet the argu-
21 ment of the prosecution that this Court should act
22 upon and set certain legal precedents, and pointing
23 out that there is not the proper international law, as
24 we have argued in our arguments on legal jurisdiction,
25 which I will come to very shortly in the argument.

(6) We argued, in our motion to dismiss the
1 various counts of the Indictment against KOISO, that
2 the evidence offered by the prosecution is not suffi-
3 cient to warrant a conviction (T. 16,415 to 16,443).

4 We submit that the evidence of the defendant
5 has confirmed our contentions in his behalf.

6 We state that to determine whether a crime has
7 been committed, it must be established:

8 1. That an act was committed which was suffi-
9 cient to constitute a crime objectively, i.e., having
10 the objective elements of a crime.

11 2. That the accused had the intention or know-
12 ledge of committing said crime, subjectively, i.e., he
13 must have committed the act with the knowledge of facts
14 or subjective elements, that they would rightly consti-
15 tute the said crime, and we submit that the prosecution
16 has failed to prove that KOISO committed any act which
17 constituted a crime objectively or that he had guilty
18 knowledge that any act he committed was wrong, or that
19 he committed any act with knowledge subjectively that
20 it constituted a crime.

21 We submit it is necessary for the prosecution
22 in order to establish crimes against peace to prove
23 that planning and preparation of a war was carried out
24 with subjective knowledge or intention to initiate or
25

1 wage a war of aggression or a war in violation of
2 international law, treaties, agreements or assurances,
3 or a war must have been initiated and waged with the
4 knowledge that the war was an aggressive war or a war
5 in violation of international law, treaties, agreements
6 or assurances.

7 A crime against peace cannot be said to have
8 been committed where one's actions were without the
9 foregoing knowledge and where the prosecution's evi-
10 dence points to an emergency situation or to a pre-
11 vailing international situation that caused the initia-
12 tion of measures for self-defense; or where the accused
13 came into a responsible position without the foregoing
14 knowledge or intention and carried out the duties of
15 his office as a patriotic citizen of his country in
16 what he believed to be a war for survival.

17 All wars are not criminal, and the burden of
18 proof is on the prosecution to show the accused had
19 knowledge that the said war was one of aggression or
20 in violation of international law, treaties, agreements
21 or assurances, and that the accused did not rely on
22 official statements that his government was exercising
23 its exclusive, sovereign prerogative to institute and
24 carry out measures on the basis of self-defense.
25

Since the causes of a war are complicated and

1 divergent, it is difficult for anyone other than the
2 sovereign nation itself to analyze what action is a
3 measure of self-defense and even the governing body of
4 a country may be wrong in its judgment and decision and
5 statement, due to omissions in its information or mis-
6 information, or misunderstanding when coupled with
7 the difficulty of understanding and analyzing the real
8 situation prevailing inside an opposing country,
9 especially when the relations of countries are strained
10 and the sentiment, passion and pride of the people is
11 aroused.

12 Therefore, assuming it was clear after peace
13 has been restored and abundant revealing information has
14 been collected from the various countries concerned
15 that in the light of difficult and profound theory of
16 international law, treaties, agreements and assurances,
17 a war has been waged that was illegal or aggressive,
18 these facts alone do not establish that the officials
19 of the country concerned were cognizant that said war
20 was or would be considered illegal or aggressive. The
21 prosecution must show by facts and evidence that at the
22 outset and at the time thereof this accused had such
23 guilty knowledge beyond a reasonable doubt which they
24 have failed to do.
25

Since international law, treaties, agreements

or assurances require highly technical knowledge in
1 relation to the interpretation thereof, together with
2 the circumstances enumerated above, it becomes impos-
3 sible for an individual or the general public to form
4 an independent judgment as to the legality of a war
5 and they are compelled to listen and depend naturally
6 upon government announcements and opinions of other men
7 of authority and as in the case of an interpretation of
8 the reservation of the right for the use of self-
9 defense mentioned in the Kellogg-Briand Pact since a
10 clear and concise definition has not been reached by
11 international agreement and proclamation, the exclu-
12 sive determination and interpretation thereof is an
13 individual sovereign right of each nation.

15 When we consider the above-stated points, we
16 readily understand why in the Nuernberg judgment they
17 did not find guilty of crimes against peace any defen-
18 dant who failed to attend those important conferences
19 at which Hitler confidentially expressed his aggressive
20 intention and only where the prosecution proved beyond
21 a reasonable doubt that those in this small inner circle
22 had guilty knowledge and intention to act, to carry out
23 Hitler's aggressive war plans, did the court impose
24 penalty.
25

We submit that the finding of the Nuernberg

1 trial in relation to the "General Staff and High Command"
2 reaffirmed the principle that the simple fact that an
3 accused occupied a certain important position at the
4 time when a certain incident broke out does not estab-
5 lish that said accused is guilty of a crime against peace
6 and a sharp distinction was made between this and a
7 criminal organization such as the Nazi party of Germany.
8 Here, the cabinet, the Ministry of War, other ministries,
9 the General Staff Office and the Kwantung Army Head-
10 quarters have not been shown by the prosecution to be
11 criminal organizations, and the occupation of a position
12 thereon does not establish the fact that the defendant
13 was guilty of a crime against peace.

14 If the prosecution has established that a
15 certain criminal act occurred in which several persons
16 participated, we submit that only those members of said
17 joint action can be held responsible for the crime who
18 had guilty knowledge that said act was a crime, or
19 whose official acts were carried out with knowledge
20 and intention to aid and assist or conspire to commit
21 said crime. (Otherwise, we overthrow the principle of
22 law that in the case where a nurse prepares medicine
23 and administers it in accordance with a doctor's
24 prescription in good faith, or in the case where the
25 doctor who, without knowing the patient's abnormal

1 constitution, prescribed for him properly, neither
2 nurse nor doctor can be charged with murder even though
3 the patient dies as a result of taking the medicine.)

4 Moreover, in the ordinary criminal offense,
5 the actual relations or objective elements of the crime
6 are not very complicated, and belong in principle to
7 illegal acts; therefore, those who brought about facts
8 or objective elements which constitute the crime can
9 generally be presumed to have had knowledge that their
10 acts were criminal but this theory is only followed
11 where the burden of proof rests with the defendant who
12 contends his innocence.

13 In the case of a war the actual relations as
14 previously stated are not only complicated and divergent
15 but if there is a presumption it would be that a war
16 is not illegal. Therefore, except in a special instance
17 where a defendant is a member of an organization which
18 has been declared by a court of justice to be criminal
19 the burden of proof regarding a malicious intention or
20 guilty knowledge is on the prosecution and has not been
21 established by the evidence presented against the defen-
22 dant KOISO.

24 Mere knowledge by a defendant that following
25 a war or an act of hostility a change is brought about
in the territorial sovereignty of a certain area does

1 not establish that said war or act of hostility was one
2 of aggression or was intended to be one of aggression.
3 For example, during World War I, the Allied Powers
4 occupied certain territories and countries, and, after
5 the war, made a part of them either their own territory,
6 or acquired same as mandated territory. No one by
7 reason thereof would accuse such countries of having
8 or of having considered this change as being interpreted
9 as being aggressive, or contemplated as such either
10 during the waging of the war or thereafter.

11 We submit that simple declarations in newspapers,
12 or marshalling of various policies alone are far from
13 sufficient to establish that a plan for an aggressive
14 war existed. The Nuernberg finding clearly stated this
15 point:

16 "But in the opinion of the Tribunal, the
17 conspiracy must be clearly outlined in its criminal
18 purpose. It must not be too far removed from the time
19 of decision and of action. The planning, to be criminal
20 must not rest merely on the declaration of a party
21 program, such as are found in the 25 points of the Nazi
22 party, announced in 1920 or the political affirmation
23 expressed in 'Mein Kampf' in later years. The Tribunal
24 must examine whether a concrete plan to wage war existed
25 and determine the participants in that concrete plan."

We further submit, ~~that to be a participant,~~
1 guilty knowledge must be proven by the prosecution to
2 have existed on the part of the accused and to have
3 governed his actions.

4 In examining various counts under Group I,
5 Crimes Against Peace, we find their constitution
6 extremely complicated and hard to comprehend, and
7 that no clear charge with sufficient connecting and
8 supporting evidence has been established against the
9 defendant KOISO, and we submit that KOISO had no con-
10 nection with the crimes charged, even if such a general
11 and abstract conspiracy as charged by the prosecution
12 existed. We further submit that such a charge by the
13 prosecution under count I cannot be said to constitute
14 a crime against peace as set forth by Article 5a of
15 the Charter of the Tribunal in light of the Nuernberg
16 decision above quoted. (The prosecution has failed
17 to show that KOISO conspired with the defendants or
18 other divers persons. The prosecution's evidence
19 (Ex. 1278) shows KOISO was not intimately known by
20 other accused and members of the government, and was
21 considered by the army circle to belong to a neutral
22 faction, and by government officials he was described
23 as a just, moderate and moral character, possessed of
24 a well-developed common sense. The prosecution has
25

failed to show that KOISO was member of either the Ein-
seito or Seiyukai political parties, or active in any
1 other political group or factions. The prosecution's
2 evidence establishes that the so-called March Incident
3 and October Incident of 1931 were domestic political
4 issues due to the corruption of domestic administration
5 and aimed at internal reform, and that there was no
6 relation between these incidents and any war or plan
7 for war, as was testified to by witnesses SHIMIZU,
8 Kenosuke; TOKUGAWA, Yoshichika; and UGAKI, Kazushige,
9 during cross-examination on 26 June and 1 July 1946.
10 (T. 1404-1410, 1411, 1418, 1419, 1626 and 1627.)
11

12 This testimony clearly shows that the defen-
13 dant KOISO was not a participant but that KOISO, by
14 order of his superior, prevented the carrying out of
15 these incidents and caused the firecrackers to be used
in the demonstration to be confiscated.

17 Court exhibits 179-C and F, excerpts from KIDO's
18 diary, we submit are not reliable as they were based
19 on hearsay received by KIDO from HARADA. Since HARADA
20 was not a participant in either preventing or planning
21 the incident his information could only be based on
22 rumors unfounded on facts, many of which were circu-
23 lating in political circles. The previous paragraph
24 also explains why KOISO was kept at a respectful
25

distance by extremist political factions. Furthermore,
1 UGAKI, the War Minister in the Minseito Cabinet which
2 was then in power, could not conceivably be expected
3 to discuss a scheme for overthrowing the cabinet with
4 Mr. MORI, a leader of the Seiyukai, an opposition party.
5 (T. 1626-27.)

6 On the Manchurian Incident, the prosecution's
7 evidence fails to prove that KOISO in any of the posi-
8 tions of government occupied (Ex. 114) was in a posi-
9 tion of authority or responsibility, or was connected
10 in any illegal or criminal activity or conspiracy.

11 The prosecution's evidence presented by the
12 witness SHIDEHARA, Kijuro, Minister of Foreign Affairs
13 at the time of the incident (T. 1385), and the testi-
14 mony of WAKATSUKI, Reijiro, Prime Minister (T. 1571)
15 discloses that the defendant MINAMI, Minister of War,
16 supported SHIDEHARA's policy for localization of the
17 incident and assisted in carrying out this policy.
18 KOISO, Chief of Military Affairs Bureau under MINAMI
19 (Ex. 162), also acting under War Minister MINAMI's
20 order carried out his duties in conformity with the
21 SHIDEHARA policy, and the prosecution's evidence does
22 not show any illegal or criminal activity in KOISO's
23 exercise of the functions and duties of his office.
24
25

Later, on the formation, in December 1931, of

the INUKAI Cabinet in place of the WAKATSUKI Cabinet,
1 KOISO, first in the capacity of Chief of Military Affairs
2 Bureau as theretofore, and also later as Vice-Minister
3 of War, had administrative authority and responsibility
4 that was very limited. (T. 14,397, 14,405 and 14,406.)

5 On 8 August 1932 KOISO was appointed Chief of
6 Staff of Kwantung Army under Field Marshal MUTO,
7 Commander-in-Chief of Kwantung Army, where he executed
8 his administrative duties in conformity with the orders
9 of the Commander-in-Chief (T. 2075-2076 and 2101-2102)
10 and in the belief that the administrative duties
11 assigned to him were in conjunction with the subjugation
12 of bandits, the maintenance and restoration of peace
13 and order, and for the protection of Japanese and
14 Korean residents and property rights under the Japanese
15 Government's previous steps taken in the exercise of
16 its sovereign right of self-defense, which was generally
17 accepted on the basis of the report of investigation
18 testified to by witnesses. (SHIDEHARA, T. 1338; WAKAT-
19 SUKI, T. 1573 and TANAKA, T. 2087-8.) We submit
20 defendant KOISO had no means or facilities of his own
21 to inquire into the state of affairs, and was dependent
22 on the announcements made by the Japanese Government,
23 the same as the above witnesses have stated they were
24 so dependent, and the prosecution's evidence fails to
25

1 establish that defendant KOISO had guilty knowledge
2 that said incident was or would be considered an
3 aggressive act as alleged (K-3, T. 40,539).
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1 Although KOISO was Minister of Overseas
2 Affairs in the HIRANUMA Cabinet from 7 April to
3 30 August 1939 and in the YONAI Cabinet from 16
4 January to 22 July 1940 and Prime Minister from 22
5 July 1944 to 7 April 1945, there is no evidence
6 connecting KOISO, or proving he participated, or had
7 any responsibility for the military actions that
8 occurred, or were being carried on during said periods
9 of occupying said government posts. The KONOYE
10 Cabinet having adopted a policy of not enlarging
11 the said conflict, negotiated with the Chinese in
12 the hope of coming to a solution, but failed and
13 succeeding cabinets failed in their efforts. (T. 31,242-
14 8)

15 The military action necessitated by the
16 conflict was solely in the prerogative of the Chief
17 of the General Staff, and the cabinet had no authority
18 therein as shown by prosecution evidence. (UGAKI, T. 1620)
19 (SHIDEHARA, T. 1389-1392) and Ex. 179-L). Furthermore,
20 the Japanese Government having publicly declared that
21 the outbreak of the China Incident originated in
22 self-defensive action taken to protect Japanese
23 residents and property rights and against provocative
24 Chinese acts resulting from anti-Japanese propaganda,
25 it was natural that KOISO not having at his disposal

1 any organization or means to personally investigate
2 such matters, should give full credence to the
3 declaration of the government, and there is no
4 evidence which indicates that the defendant was
5 cognizant, that the Chinese Incident and the actions
6 taken therein was or would be considered unlawful
7 or illegal as alleged and the evidence does not show
8 that he conspired or participated in any manner as
9 charged or that his action in the exercise of his
10 duties and responsibilities in any government position
11 was unlawful or illegal, or done with guilty knowledge
12 or malicious intent to conduct or assist in any
13 unlawful act.

14 (7) We respectfully request the Tribunal
15 to reconsider the legal arguments in certain motions
16 we have presented as to jurisdiction, especially the
17 motion dealing with the remoteness of the Manchurian
18 Incident to the subject matter under consideration
19 at the signing of the Potsdam Declaration and
20 Instrument of Surrender, and that said Charter and
21 Indictment have no legal basis to confer on the Court
22 jurisdiction over any matter so remote to the subject
23 of such deliberations as the pacific war.

24 We now proceed to Section 10, our concluding
25 argument.

SECTION 10 -- CONCLUDING ARGUMENT

1 In considering how KOISO thought, and how
2 he acted in the handling of matters in the light of
3 various situations at home and abroad, during the
4 period 1928 to 1945, covered by the Indictment, we
5 have seen that nationally he endeavored to preserve
6 tranquility in every degree by legal means, and at
7 the same time, to bring about an orderly adjustment of
8 domestic conditions by means of moderate processes,
9 and that internationally he considered it essential
10 to bring about friendship with China on a thoroughly
11 sound basis, and to avoid any conflict with the
12 United States, Great Britain and the Soviet Union.
13 For these purposes, he restrained the young Army
14 officers and thwarted the reckless designs of civilians
15 who schemed to tempt these young officers into partic-
16 ipation in their plans, and disposed of articles
17 which might be the source of harm in the future. In
18 view of the disquieting conditions in a neighboring
19 country, he counselled prudence to his superiors;
20 after the outbreak of the Manchurian Incident he
21 labored to realize the policy of non-expansion; and
22 while assigned to a post of duty in Manchuria, he
23 assisted his superior, the Commander-in-Chief, only
24 as an administrative officer, when the Army was as

1 he believed maintaining law and order in adherence
2 to the Japan-Manchoukuo Protocol, which he believed
3 to be a legal agreement between independent nations.
4 With regard to Soviet relations, he advocated the
5 necessity of concluding a Japan-Soviet non-aggression
6 pact. At the time of the China Incident he urged its
7 speedy settlement and advised against becoming deeply
8 involved in the territory of the Chinese homeland.
9 Later, in view of the fact, that the incident could
10 not be terminated easily, he advocated requesting
11 the United States and Great Britain to mediate peace
12 between Japan and China. He opposed the conclusion
13 of the tri-partite alliance as being of no advantage
14 to Japan. He was unexpectedly called to assume the
15 joint Premiership, with Admiral YONAI, on the fourth
16 year after the commencement of the Pacific War, and
17 devoted his efforts to the administration of state
18 affairs with the ultimate purpose of terminating the
19 war and restoring peace.
20

21 Such were his beliefs, and such his acts
22 based on such beliefs, carried out in good faith with
23 no ulterior motive nor intention to commit unlawful
24 acts or cause illegal conduct. Neither has he
25 participated in a common conspiracy to commit aggression
against the territory of another country or to commit

1 any of the unlawful acts listed as crimes in the
2 Indictment, nor has he ever initiated, planned, prepared
3 or acted as an accomplice in such acts, nor has he,
4 utilizing his authority, ordered, or permitted such
5 acts.

6 Examining the above, we submit the evidence
7 does not support the grounds upon which the prosecution
8 have indicted KOISO as an accused. He should, therefore,
9 be pronounced not guilty of such charges.

10 We submit the Honorable Members who have
11 been appointed to this Tribunal certainly have been
12 burdened with an onerous and important role.

13 We are of the firm belief that this Tribunal
14 has a noble and grave mission of destiny to judge,
15 according to true and immutable standards of universal
16 justice, the issues upon which the prosecution contend
17 that this defendant is guilty of violations of
18 international law, peace or humanity. By so judging
19 you open the doors of enlightenment and show the right
20 path of justice to the peoples of the world of today
21 and tomorrow.

22 There is a limit to the span of human life.
23 It does not live on forever. But there is eternally
24 no halt, no limit, to the rise and fall of nations
25 and people in the vicissitudes of international

situations, and the judgment of the Honorable Members
of this Tribunal may well be a guiding star toward
the eternal future for our children and our children's
children.

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1 With deepest respect, Mr. President and Members
2 of the Tribunal, the last wish of this counsel is to ask
3 that you make manifest to the peoples of the world the
4 truth, that the prosecution were not necessarily in all
5 matters in the right and that the accused was not
6 necessarily in all matters in the wrong, and that no
7 man was punished, merely because he was one of the
8 defeated, a Japanese, a former official of Japan and a
9 member of what the prosecution might term the "enemy
10 clique" who caused damage to your people. Who the
11 prosecution might arouse by the passion and prejudice of
12 war, consider could be sacrificed as an example and by
13 way of reprisal for the damage caused by illegal actions
14 of others of the "enemy clique" who are of the same
15 nationality, but with whose crimes we submit this accused
16 was not connected in a way to bear criminal responsibility
17 therefor.
18

19 Furthermore, KOISO did not attend any of the
20 Imperial or liaison conferences or cabinet meetings
21 listed in Appendix E of the Indictment. Therefore, the
22 prosecution's evidence under Counts 4 to 17 is not
23 sufficient to implicate this defendant. KOISO had tried
24 to end the hostilities even though he firmly believed in
25 the Imperial Rescript (Ex. 1240) proclaiming this to be
a legitimate war in the exercise of sovereign rights.

1 KOISO, as a citizen of this country, and un-
2 related in any way with planning, preparing or initiating
3 this war, had no alternative but to place reliance and
4 trust on said Imperial declarations, and in doing so, had
5 no knowledge that he was committing any alleged unlaw-
6 ful act. The prosecution evidence does not prove or
7 indicate that KOISO had knowledge that this was an
8 illegal war as alleged, and, we submit, since the move-
9 ment of armed forces are under the jurisdiction of the
10 High Command, and are controlled exclusively by the Chief
11 of the Army and Navy General Staff, the responsibility
12 for their actions has no connection with KOISO during
13 said time.

14 The defendant KOISO voluntarily presented him-
15 self to the authorities for interrogation and trial, and
16 has co-operated to place the truth before this Tribunal
17 so that his actions might be judged and his name be
18 cleared of any implication that he was knowingly a partic-
19 pant in any dishonorable act or had malicious or unlawful
20 intentions in conducting his duties as a government
21 official. All who have deep understanding concerning suc-
22 matters, after solemn deliberation and reflection, settin
23 aside resentment and prejudice aroused by war, will
24 understand and discern the difference between patriotic
25 devotion to duty and malicious premeditated action.

1 We respectfully submit that being deprived of
2 liberty in Sugamo Prison for more than two years has been
3 an exacting experience for a man of his years and ask
4 that an order be entered summarily dismissing and dis-
5 charging said defendant from custody.

6 Thank you.

7 THE PRESIDENT: Captain Brooks, we will declare
8 the law as we ascertain it and the facts as we find them
9 so far as is necessary for the purposes of our judgment.
10 We are not concerned with the political aspects.

11 These summations are repetitious to a very
12 large extent. Many matters which could have been put in
13 the general summation have been repeated at great
14 lengths in the summations of the individual cases.

15 MR. BROOKS: If your Honor please, this is the
16 second individual summation that I have taken out of
17 turn, and I had hoped to have time to polish it more and
18 develop my ideas a little more, but the time element has
19 prevented us, and I realize there is some repetition in
20 it.

21 THE PRESIDENT: We make due allowance of that.

22 We understand that HOSHINO's is the next case.

23 MR. BROOKS: Mr. HIGITA is ready to proceed.

24 THE PRESIDENT: And that will finish before the
25 mid-morning recess tomorrow?

1 MR. BROOKS: I think it will.

2 THE PRESIDENT: I have just been informed by
3 my secretary that no further summations after HOSHINO
4 will be ready before Wednesday owing to some processing
5 hold-ups. I propose to look into that during the recess
6 with a view to avoiding any waste of time tomorrow.

7 MR. BROOKS: I personally borrowed this paper,
8 your Honor, to process this, in order to fill in the gap
9 with the hope that that would be sufficient, but I am
10 afraid it will not.

11 THE PRESIDENT: We will begin HOSHINO's
12 summation after the recess.

13 We will recess for fifteen minutes.

14 (Whereupon, at 1445, a recess was
15 taken until 1500, after which the proceed-
16 ings were resumed as follows:)

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MARSYAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: I have been assured by the
3 representative of defense counsel that the processing
4 department is not responsible for any delay in pre-
5 senting the summations. The summations should be
6 presented in time to enable translations to be made
7 for the Member from the U.S.S.R. But for that, I
8 understand, SATO's and MUTO's summations would be
9 ready tomorrow. However, we shall try to overcome
10 that difficulty with a view to avoiding any waste of
11 time.
12

13 Captain Kraft.

14 LANGUAGE ARBITER (Captain Kraft): If the
15 Tribunal please, the following language correction is
16 submitted. Reference: Exhibit No. 1328, page 1,
17 lines 4, 11, 15, 19 and 33, and page 2, lines 3, 7,
18 9 and 10, and record page 11,923, line 19, and page
19 11,924, lines 4, 10, 15 and 16, and page 11,925, lines
20 12, 17 and 23, and page 11,926, line 1. Delete the
21 words "Statistics Bureau" and substitute "Supreme
22 Command."
23

24 THE PRESIDENT: Thank you, Captain.

25 Yes, Counsellor.

MR. MIGITA: Mr. President and Members

1 of the Tribunal:

2 In presenting the defense summation of
3 HOSHINO, Naoki, we begin with:

4 A. Manchuria Period.

5 1. From July 1932 to December 1936.

6 HO-1. HOSHINO was a career civil servant.

7 On graduating from the University in 1917, he immed-
8 ately entered the Finance Ministry, where he continued
9 to serve until he left for his new post in Manchukuo
10 in 1932.^a

11
12 HO-2. In June 1932, when a request for
13 expert assistance came from the newly-formed Govern-
14 ment of Manchukuo to the Japanese Finance Ministry,
15 HOSHINO was merely a section chief in that Ministry.
16 He was accordingly asked to go to Manchuria by TAKA-
17 HASHI, the liberal Finance Minister who was assassinated
18 in the February 26 Incident in 1936, and other superiors
19 in the Ministry, but he at first declined because of
20 the illness of his father and of some other family
21 circumstances. Eventually, however, he decided to
22 go as he had been persuaded to do so by his superiors and
23 friends.^a

24
25 HO-1.
a. Ex. 109.

HO-2.
a. Ex. 3209, Tr. 29101-2.

HO-3. HOSHINO went to Manchukuo with
1 several other officials including TANAKA, Shizuka,
2 who later became Chief of the Finance Bureau in the
3 Department of Finance of Manchukuo. When they took
4 leave of Premier SAITO, Makoto, who also was assas-
5 sinated in 1936, he instructed them that they would
6 be going over to Manchukuo not as Japanese officials
7 but to become the servants of Manchukuo and to keep
8 this fact always in mind while in this service.^a It
9 is the submission of the defense that all the evidence
10 concerning HOSHINO's conduct in Manchukuo has clearly
11 demonstrated the fact that he faithfully adhered to
12 this instruction of Premier SAITO by loyally performing
13 his duties toward Manchukuo and its people.

HO-4. He arrived in Manchukuo on July 17,
16 1932, and was appointed Chief of General Affairs
17 Bureau in the Finance Department.^a It was then
18 almost a year after the Manchurian Incident and four
19 months after the foundation of the state of Manchukuo.
20 By this time, as the Lytton Report describes, the
21 administrative and financial foundation of the new
22 state had been roughly laid, and the Central Bank of
23 Manchu had been operating since July 1.^b

25 HO-3.

a. Ex. 2475, Tr. 20462.

HO-4.

a. Ex. 109.

b. Ex. 57, Tr. 97-103.

HO-5. The Manchukuo Government had then
1 eight departments under the Prime Minister, namely,
2 Departments of Civil Administration, Education,
3 Finance, Communication, Industry and Commerce, etc.^{a.}
4 The Chief of the General Affairs Board was then
5 KOMAI, Tokuzo.^{b.} Minister of Finance was Hsi Hsia;
6 its Vice-Minister was Sun Chi-chang. The Finance
7 Department consisted of three bureaus, namely,
8 Finance, Taxation, and General Affairs. The duty of
9 the General Affairs Bureau was to maintain the co-
10 ordination and unification of the business with all
11 other bureaus, but without any authority to direct
12 the other bureaus.^{c.} At that time, there were twenty-
13 seven bureaus altogether in the eight departments and
14 therefore, HOSHINO's position was one of the twenty-
15 seven bureau chiefs. He held this position until
16 June 1936, when he was appointed Vice-Minister of
17 Finance.^{d.}

HO-5. The evidence discloses that in his
20 finance post HOSHINO worked hard for much-needed
21 financial reforms which mission he was called upon to
22 perform. These reforms were unification of the
23

HO-5.

- 24
25 a. Ex. 437.
b. Ex. 453-A, Tr. 5136.
c. Ex. 2475, Tr. 20463.
d. Ex. 109.

1 monetary system, reform of the financial organization,
2 the institution of a fair accounting system, and re-
3 duction and equalization of taxes on the people.^{a.}

4 The Lytton Report recommended these reforms as desir-
5 able but doubted the possibility of their realization.^{b.}

6 Evidence further shows that in his position
7 HOSHINO rendered much assistance to the abrogation of
8 unequal treatment existing between Japanese residents
9 and Manchurians. In June 1936, the treaty concerning
10 the residence of Japanese subjects, taxation, etc.,
11 was concluded between Manchukuo and Japan.^{c.} This
12 was made as the first step toward the entire abolish-
13 ment of the extra-territoriality rights enjoyed by
14 Japan in Manchukuo.^{d.} This treaty specifically pro-
15 vided that:

16 1. Japanese subjects shall be governed
17 within the territories of Manchukuo by the adminis-
18 trative laws and ordinances thereof concerning taxa-
19 tion, industries, etc., and these laws and ordinances
20 shall operate within the South Manchurian Railway
21 Zone on the principles of statu as velia.

22 2. Japanese corporations would also be

23 HO-6.

24 a. Ex. 3211, Tr. 29121-2.

25 b. Tr. 2852-3.

c. Ex. 237, Tr. 2944.

d. Tr. 3945.

1 subject to the same laws and ordinances of Manchukuo.

2 In return for the above concessions, the
3 Manchukuo Government, of course, undertook to give
4 Japanese residents equal rights with those held by
5 the Manchurians. The prosecution brings out this
6 part of the provisions only. However, it is submitted
7 that a reading over of all the provisions of this
8 treaty and the supplementary agreements clearly shows
9 that the chief aims of these agreements were the re-
10 linquishment of the privileges on the part of Japan.

11 As the treaty was to affect the Japanese
12 interests in Manchuria very much, there had been a
13 strong opposition from some circles of the Japanese
14 authorities and various Japanese quarters on the
15 ground that the time was still immature. The strongest
16 of these came from the Japanese residents, whose
17 taxes would be increased considerably as the result
18 of this treaty.^{f.}

19
20 HOSHINO participated in this matter because
21 of his duty relating to taxations and he advocated
22 the signing of the treaty as soon as possible and made
23 efforts to mollify the discontented Japanese residents
24 with the end in view of a sound development of

25 HO-6.

f. Tr. 29123.

1 Manchukuo and the impartial sharing of the burden by
2 both Japanese and Manchurians. (ibid).

3 HO-7. It is submitted that all the evidence
4 relating to his activities in this period shows
5 that HOSHINO did faithfully carry out the duty
6 assigned to him as a civil servant by the laws of
7 Manchukuo which had been already in existence; it
8 also discloses that in his position he did contribute
9 to a large extent to the welfare and prosperity of
10 Manchukuo and Manchurians. His relation to the Kwan-
11 tung Army which he held in his capacity as bureau
12 chief or Vice-Minister in the administration of
13 Manchukuo does not, in the submission of the defense,
14 implicate him in any conspiracy alleged to have
15 existed to wage aggressive war. This subject the
16 defense will deal with later.

17 2. HOSHINO as Chief of the General Affairs
18 Board, from December 1936 to July 1940.

19 HO-8. In December 1936, HOSHINO was made
20 Chief of the General Affairs Board of Manchukuo. This
21 post had been held since the foundation of Manchukuo
22 by KOMAI, ENDO, NAGAOKA and ODATE, and on the resigna-
23 tion of ODATE, HOSHINO was appointed to fill the
24
25

1 vacancy as the fifth Chief.^a By this time, the
2 foundation of the state had been firmly laid and its
3 foreign relations, including those with Japan, had
4 generally been settled. Manchukuo had entered into
5 a stage of internal construction and economic
6 development.^b The agreement concerning the Japan-
7 Manchukuo Joint Economic Committee^c had been already
8 reached in July 1935 and the Five-Year Industrial
9 Plan^d already formulated.

10 HO-9. Regarding the circumstances of
11 HOSHINO's appointment as Chief of the General Affairs
12 Board, witness MATSUKI, who had served in the Man-
13 chukuo Government since 1932 and later became Deputy
14 Chief of the same board under HOSHINO stated in sub-
15 stance that in that stage of internal construction
16 and development the Manchukuo Government became in
17 need of a financier and economist who could render
18 assistance to the Premier. Therefore, in view of
19 this need and his long experience in the Manchukuo
20 Government, HOSHINO was chosen for the post on the
21 recommendation of his predecessor and the Premier.^a

23 HO-8.

- 24 a. Ex. 453-A, Tr. 5136.
25 b. Ex. 3210, Tr. 29107.
c. Ex. 851, Tr. 8433.
d. Ex. 445.

HO-9.

- a. Tr. 29107.

1 HO-10. As Chief of the General Affairs
2 Board, HOSHINO was subject to the Premier's direc-
3 tion,^a and he attended to his business, in obedience
4 to Premier Chang's direction and decision, rigidly
5 within the limits of his duty, and had never decided
6 anything on behalf of the Premier.^b He had due
7 regard for the opinion of Manchurians, so much so
8 that he was criticized for it, and no important
9 matters were disposed of without consultation with
10 the Manchurian Deputy Chief, Ku Tsu-hsiang, (ibid)
11 who secured this position as the first native
12 Manchurian through HOSHINO's recommendation and
13 effort. He caused many Japanese high officials in
14 the General Affairs Board to be replaced by Manchurian
15 officials,^c saying that the latter should play a
16 greater part.^d He contributed to the elimination
17 of the salary discrimination between Japanese and
18 native Manchurian officials.^e

20 HO-11. Concerning the policy of Manchukuo,
21 witness TANAKA, Shizuka, stated that it was its
22 definite policy to treat all of its citizens equally

23 HO-10.

24 a. Tr. 29106, Tr. 5135.

b. Tr. 29108.

25 c. Tr. 29108.

d. Tr. 29142.

e. Tr. 29109.

and priority was never accorded to any of them.^{a.}

1 He further stated that the Government made special
2 effort to encourage the investment by Manchurians in
3 case of such shares as Manchu Electric Company which
4 was deemed promising. (ibid). Evidence discloses
5 that the Government of Manchukuo strictly required
6 that any corporation coming therein should have to
7 be incorporated under the laws of Manchukuo, regard-
8 less of where the corporation came from. Prosecution
9 exhibit 445 clearly shows that the Government of
10 Manchukuo endeavored to improve the private economy
11 of its citizens; it assisted farmers and middle-
12 class and small scale enterprisers to get loans at
13 the reduced rate of interest;^{b.} it strove for lighten-
14 ing the burden of the people, supplying commodities
15 at low prices, and providing work to the unemployed.^{c.}

18 HO-12. 1. HOSHINO, as Chief of General
19 Affairs Board, worked hard for the furtherance of
20 this policy of the Government. Witness MATSUKI stated
21 that HOSHINO paid much attention to the stabilization
22 of the lives of the people, and too much care to guard
23 them against the afflictions caused by the European

24 HO-11.

25 a. Ex. 3214, Tr. 29141.

b. Tr. 20454.

c. Tr. 20452.

1 War and China Incident.^a A great deal of evidence
2 was adduced to demonstrate HOSHINO's attitude of
3 fairness and nondiscrimination on the question of
4 whether Japanese or Manchurian interest came first
5 there. ISHIWATA, MATSUKI and TAKAKURA testified to
6 his having been criticized for being too pro-
7 Manchurian rather than pro-Japanese.^b HOSHINO
8 sought to lower tariffs in favor of Manchukuo,^c
9 and sought to sell Manchukuo's products to Japan
10 as dearly as possible and to buy goods from Japan
11 as cheaply as possible,^d and in general try to
12 prevent any policy he considered adverse to the
13 interest of Manchuria from being carried out.^e In
14 the interrogation by the prosecution, HOSHINO states
15 that great efforts were made to sell shares of newly
16 established companies among the population in
17 Manchukuo.^f

18
19
20
21 HO-12.

- 22 a. Tr. 29110.
23 b. Tr. 29103, Tr. 29109, Tr. 29117.
24 c. Tr. 29103.
25 d. Tr. 29103, Tr. 29111.
e. Tr. 29130, Ex. 3212-A.
f. Ex. 3212-A, Tr. 29130.

2. According to witness OBATA, HOSHINO
1 welcomed foreign capital into Manchuria which was
2 sincerely interested in building up its economy.^g
3 This witness went on to say that it became easier for
4 all business men to conduct business matters in Man-
5 chukuo after HOSHINO became Chief of the General
6 Affairs Board. (ibid)
7

HO-13. In November, 1937, a complete aboli-
8 tion of Japan's extra-territoriality rights and trans-
9 fer of the administrative power over the South Manchurian
10 Railway Zone was effected.^a Although this complete
11 transfer had been agreed upon in the treaty of June, 1936,
12 there was much opposition to its being carried out on
13 the ground that various administrative and judicial
14 systems of Manchukuo were not yet complete. HOSHINO,
15 as Chief of the General Affairs Board, exerted more
16 strenuous effort than ever to make necessary prepara-
17 tions on the part of Manchukuo, and to persuade the
18 Japanese authorities to agree to the projected plan
19 for the complete abolition of the extra-territoriality.^b
20 This abrogation of the extra-territoriality resulted in
21 completely abolishing long-standing discriminative
22 treatment between the Japanese and the Manchurians and
23
24

HO-12. g. Tr. 29,140

HO-13. a. Ex. 2476-A, Ex. 2476-D; tr. 20,473

b. Ex. 3211; tr. 29,124

1 in contributing greatly to the economic development of
2 Manchukuo. (ibid) As prosecution exhibit 384 shows,
3 the Manchukuo Government became able to extend stringent
4 narcotic control over the South Manchurian Railway
5 Zone which it could never have done but for the trans-
6 fer of the Japanese police power over this zone. ^c

7 FO-14. 1. As to HOSHINO's activities as a
8 member representing Manchukuo for Japan-Manchukuo
9 Joint Economic Conference, the prosecution draws an
10 unreasonable inference from the discussions in the Privy
11 Council meeting held in relation to the setting up of
12 this Committee. ^a The discussions in the Privy Council
13 meeting and especially HIROTA's talk therein, we sub-
14 mit, were merely talks conducted in the secret chamber
15 in Tokyo in 1936 with which Manchukuo and particularly
16 HOSHINO had nothing to do. Moreover, as the prosecu-
17 tion admits and quotes, HIROTA's opinion was expressed
18 on an extremely imaginary basis such as in case the Man-
19 chukuo members of the committee should purposely scheme
20 to act against Japan's interest, the Chief of the
21 General Affairs Board will take proper measures after
22 giving due consideration to the interests of both
23 countries. ^b

24 FO-13. c. Tr. 4734-37
25 FO-14. a. Ex. 850; tr. 8417
b. Tr. 8430

1 It is clear from this that even in such an
2 extreme case, which was most unlikely to happen, what
3 HIROTA expected the Chief of General Affairs Board to
4 do was to take proper measures in the interests of
5 both countries.

6 Therefore, in the submission of the defense
7 the Privy Council Record in question does not serve in
8 the least as evidence showing the actual manner and
9 method in which the said Committee functioned, much
10 less as evidence relating to an actual attitude of
11 HOSHINO, who used to protect the Manchurian interest
12 so much that he was often criticized as "pro-Manchurian."

13 2. Moreover, in the view of the defense, the
14 setting up of this Joint-Economic Committee and the
15 said Privy Council discussions relating thereto serve
16 to show that Manchukuo and Japan stood mutually in give
17 and take relationship in the matters of trade and in-
18 vestment.

19 HO-15. Manchukuo Five-Year Industrial Plan

20 1. The plan was jointly formulated by the
21 authorities of the South Manchurian Railway Company
22 and Manchukuo, upon the result of the basic researches
23 which they had conducted for some years past. The^a

24 HO-15. a. Ex. 2472; tr. 20,421
25

1 formulation of the plan was first started around the
2 summer of 1936 and completed in November of the same
3 year.^b

4 HOSHINO, who was then Vice-Minister of Fin-
5 ance, participated in the preparation of the financial
6 part of the plan.^c He was one of the many people from
7 the South Manchurian Railway Company, the General
8 Affairs Board, and the Department of Industries and
9 Commerce, etc. The Kwantung Army rendered its good
10 offices to effect a smooth progress of the joint plan-
11 ning.^d

12 2. The objective of the plan was to achieve
13 overall development of basic industries as well as
14 agriculture, transportation, and communications. The
15 reasons for formulating such a plan were many; it was
16 then considered necessary to develop industries under
17 a co-ordinated plan instead of in a haphazard way,^f
18 and a reported success of first and second five-year
19 plans of the Union of Socialistic Soviet Republics
20 offered a hint for such a long-range planning.^g Prose-
21 cution exhibit 445 is definitely clear in stating that
22 the Five-Year Industrial Plan aimed to establish and
23

24 HO-15. b. Ex. 2472; tr. 20,422
25 c. Ex. 453-A; tr. 5126
d. Ex. 2472; tr. 20,422
e. Ex. 2472; tr. 20,424
f. Ex. 453-A; tr. 5126
g. Tr. 20,421

1 expedite important industries and to promote national
2 economy. ^h Witness OKUMURA, who represented the South
3 Manchurian Railway Company in drafting the plan,
4 stated, "It was, of course, considered that the plan
5 would contribute toward the national defense, but at
6 the same time it was believed as a necessary step to
7 improve the peoples' lives." ⁱ Referring to the capital
8 outlay of the plan, only five per cent of the total
9 capital was devoted to munition industries. ^j

10 3. In formulating the production plan, not
11 only the self-supply of materials for the future needs
12 within Manchukuo, but the exports to Japan were taken
13 into account. As to the export of materials to Japan,
14 however, it was only an estimate formed by Manchukuo
15 authorities based upon their own expectations of the
16 probable amounts they would be able to export to Japan
17 in the future. Manchukuo did not have sufficient
18 materials and capital for the execution of the plan,
19 so they had to request assistance from Japan. Accord-
20 ing to witness OKUMURA, the Manchukuo Government
21 immediately after the formation of the plan sent several
22 persons to Japan and had them explain and request from
23 the Japanese Government necessary funds and industrial
24

25 HO-15. h. Tr. 5063
i. Tr. 20,425
j. Ex. 2472; tr. 20,424

1 materials for the plan. ^k KISHI, who was then Vice-
2 Minister of Industry and Commerce of Manchukuo, stated
3 in 1938 that he was also dispatched to Japan for the
4 same purpose. ^l All the evidence, we submit, has made
5 it clear that the execution of the Five-Year Plan would
6 bring in much benefit to Manchukuo and its people in
7 various ways; namely, development of industries and a
8 modern system of communication and transportation by
9 the capital and materials from Japan, and the turning
10 out of many products available for export which would
11 enrich the people's lives. However, OKUMURA further
12 stated that the Japanese Government, including Manchurian
13 Affairs Board and the War Department, did not show any
14 interest in the plan, and besides, no information was
15 ever given to them of the fact that there would be a
16 similar plan in the War Ministry. ^m

17
18 4. In our submission, all the evidence
19 relating to the plan offers sufficient refutation of
20 the prosecution's theory that the plan constituted a
21 part of an aggressive scheme of Japan and the Kwantung
22 Army, or that it related to the decisions as to the
23 national policy made on August 11, 1936, and the Japan-
24 ese industrial plans (GG-11).

25 FO-15. k. Tr. 20,423
1. Ex. 2474; tr. 20,434
m. Tr. 20,423

The prosecution also argue that the plan
 1 was much more than an economic one and that it aimed
 2 at the domination of the whole of East Asia. But OKU-
 3 MURA stated that the plan pre-supposed a state of peace
 4 which would enable Manchukuo to devote all of its
 5 power for carrying out such a coordinated plan,ⁿ
 6 while KATAKURA testified that the plan was very small
 7 in its scale.^o The truthfulness of this evidence is
 8 demonstrated by the fact that only a half year after
 9 its commencement the China Incident broke out, placing
 10 a great unexpected obstacle in the course of its execu-
 11 tion and eventually causing the revision of the plan.

HO-15. The outbreak of the China Incident
 13 was indeed a great surprise and caused deep regret not
 14 only to the authorities concerned in the execution of
 15 the plan but to all those who sincerely hoped for the
 16 healthy development of Manchukuo. KISHI stated in
 17 his speech in 1938 that he had to face many unexpected
 18 difficulties resulting from the Incident which he had
 19 not foreseen at all.^a Witness OKUMURA,^b KATAKURA,^c
 20 MUTO,^d and TANAKA^e corroborated this evidence. HOSHINO
 21 himself stated in the interrogation by the prosecution
 22 that the China Incident came as a surprise to him.^f

HO-15. n. Tr. 20,425
 24
 25 o. Tr. 19,040

HO-16. a. Tr. 20,434
 b. Tr. 20,425
 c. Tr. 19,039
 d. Tr. 20,398
 e. Tr. 20,471
 f. Tr. 29,129

President of the Corporation.^b According to the testimony of witness OBATA, one of the inducements offered by AIKAWA was his ability to get in foreign capital, particularly American capital and techniques.^c As the company was formed to take over under its management many of the enterprises which had hitherto been controlled by the South Manchurian Railway Company, there was a considerable number of objections expressed on the part of the Company. Hence, a certain amount of hesitancy came from MATSUOKA, then President of the Company.^d As to the nationality of the Corporation, too, an opinion was expressed by the Company that it should be of Japanese,^e but it was made a Manchukuo Corporation incorporated under the special law of Manchukuo in December, 1937.^f Viewed in this light, the establishment of the corporation brought about the very desirable result of bringing together all important industries in Manchuria under the single management of a Manchukuo corporation. The business concerning formation and operation of the corporation, of course, was within the jurisdiction of the Industrial Department of Manchukuo and HO-HINO as Chief of the General

HO-18.

b. Ex. 2475; T. 20,470

c. T. 29,141

d. Ex. 453-A; T. 5129

e. Ex. 453-A; T. 5143-4

f. T. 5130

1 Affairs Board assisted in preparing the laws concerning
2 the formation and operation of the corporation. (ibid.)
3 According to the statement by witness TANAKA, Shizuka,
4 who was one of the directors of this corporation, the
5 corporation did its best to obtain investments by
6 industrialists from the United States; it employed
7 Foster Bain, and Brassert Company of the United States
8 respectively to conduct necessary investigations and to
9 map out a plan for enlargement of Anshan Steel Mill
10 which was designed to become one of the biggest in
11 Manchukuo.^g However, unexpected developments of
12 the China Incident completely obstructed the project
13 of inviting foreign investments, which was considered
14 by AIKAWA as his mission. He left the position of
15 the President as soon as his first term was over.^h
16 It is submitted that this evidence makes it clear that
17 the corporation staff and the officials concerned
18 therewith including HOSHINO expected that the China
19 Incident would soon be settled, and that they did not
20 even dream of a war with the United States.

21
22 HOSHINO's Speech Made December 3, 1938.

23 HO-19. The speech in question was made, as
24 is apparent from the date thereof, nearly one and a

25 HO-18. g. T. 20,470
h. T. 20,471

1 half years after the outbreak of the China Incident in
2 July 1937.^a By this time the Incident and the policy
3 of the Japanese Government relating thereto had been
4 taking an already crystallized course, with which a mere
5 civil servant of Manchukuo could not do anything but
6 rationalize in case he should be called upon to refer
7 thereto before the public and in his official capacity.
8 In our submission, the speech in its entirety makes
9 it quite clear that what he really hoped for under
10 the circumstances was to turn a misfortune into a
11 blessing, as is expressed in a Chinese proverb; his
12 real view of the situation is clearly shown in his
13 expressed belief that such a "state of affairs would
14 never have been brought about had each and everyone
15 been inspired by the spirit of good neighborliness
16 and harmonious cooperation." It is further submitted
17 that this statement has no such particular signif-
18 icance at all as the prosecution attempts to attach
19 (GG-21).

20 HOSHINO's Relation to Kwantung Army.

21 H-20. 1. The liaison between the officials
22 of Manchukuo and the Kwantung Army was established to
23 deal with "many matters" that arose as a result of the
24 Japan-Manchukuo Treaty.^a Therefore, it was the duty
25

HC-19. a. Ex. 3251-A, p. 1.

HC-20. a. T. 5,121

of all officials of Manchukuo to maintain liaison

1 with that Army whenever they dealt with "such matters".

2 It is quite reasonable to infer that "such
3 matters" were many, especially at the outset of the
4 new State when peace and order had not been established
5 well. yet, and for this reason, the liaison between the
6 two parties was constant. It was the case with all the
7 officials of Manchukuo, so it was with HOSHINO. The
8 study of all evidence relating to HOSHINO's liaison
9 with the army shows that his was strictly limited to
10 "such matters".
11

12 The object of the liaison varied according to
13 the nature of the matters concerned. In one instance
14 it was made for moral support^b while the other for
15 understanding,^c but there never was a case where the
16 Kwantung Army dictated to the General Affairs Board.^d
17 The wishes of the former were sometimes laid before the
18 Board. On such occasions HOSHINO as Chief of the Board
19 took the necessary measures under the direction of the
20 respective authorities, but if not considered appro-
21 priate, they were not followed.^e
22

23 Referring to the Five-Year Industrial Plan,

24 HO-20. b. Ex. 453-A; T. 5,124

 c. Ex. 453-A; T. 5,121

 d. Ex. 3210; T. 29,109

25 e. Ex. 3210; T. 20,109

1 the prosecution contends that HOSHINO made a statement
2 that the Commander of the Kwantung Army made the final
3 decisions as to what should be included in the Plan.
4 (GG-11) However, an examination of the transcript shows
5 that he stated^f that so far as the Kwantung Army was
6 concerned, not the Chief of Staff but the Commander had
7 the final say in relation to the Plan. The prosecution
8 picked one sentence out of a series of sentences.

9 2. As to the scope of the liaison between
10 the two parties, the prosecution witness TAKEBE who
11 served as Chief of the General Affairs Board after
12 HOSHINO stated that, "The Kwantung Army kept strictly
13 secret from him anything pertaining to operational
14 plans."^g

15 HO-21. The prosecution stated that witness
16 TAKEBE testified that HOSHINO acted with the Kwantung
17 Army in preparation for a war against the Soviet Union
18 (GG-6). However, he simply stated that HOSHINO in his
19 activities pertaining to the construction of the
20 military objects in Manchuria as a military base
21 against Soviet Union acted in accordance with the
22 instructions of the Kwantung Army.^a It is suggested

23
24 HO-20. f. T. 5128
g. T. 31,852

25 HO-21. a. Ex. 3371; T. 31840

1 that this statement is very vague, being susceptible
2 of many constructions. In addition to this, this witness
3 stated that all the military installations constructed
4 by Japan in Manchuria had the function of serving the
5 defense purpose.^b

6 In the light of this evidence, it is submitted
7 that the statement of TAKEBE does not sustain the
8 prosecution's contention against HOSHINO at all.

9 HOSHINO's Relation With the Opium Monopoly.

10 HO-22. The prosecution charges HOSHINO with
11 responsibility for securing a loan for Manchukuo in
12 Japan by plugging the opium monopoly profit because
13 his name was signed to the loan agreement. Witness
14 TANAKA testified, however, that HOSHINO was sent to
15 Tokyo by his government together with YAMANARI, Vice-
16 President of the Central Bank of Manchu, to negotiate
17 the loan there, and that the government later decided
18 to secure the loan on the monopoly profit of opium
19 and salt as the security was demanded by the syndicate
20 in Tokyo.^a This witness further testifies that upon
21 the instruction of their Government and in accordance
22 with the Government Ordinance, HOSHINO and YAMANARI

24 HO-21. b. T. 31,845

25 HO-22. a. T. 20,465

signed the loan agreement in Tokyo November 19, 1932.^b
 1 As the dates of Exhibit 375^c and 376^d clearly indicate,
 2 the agreement was signed three days after the promulga-
 3 tion of the Bond Act in Manchukuo with which HOSHINO
 4 had nothing to do. This loan could be duly repaid as
 5 agreed within seven years.^e
 6

HO-23. The prosecution states that HOSHINO
 7 took a leading part in arranging for NAMBA to go to
 8 Manchuria for employment in the Opium Monopoly Bureau
 9 (GG-16). But NAMBA himself stated that he was chosen
 10 by the Finance Ministry for the post in accordance with
 11 the request by the Manchukuo Government.^a It is clear
 12 from prosecution's evidence^b that HOSHINO met NAMBA
 13 only once during his stay in Japan and had "very
 14 general talks" with him about the work to be done.
 15 In view of HOSHINO's position in the Finance Ministry
 16 under which supervision the Monopoly Bureau was placed,^c
 17 it became apparent that he did this in discharging the
 18 duty entrusted by his government after NAMBA had been
 19 chosen for the post by the Finance Ministry of Japan.
 20
 21

1. HO-24. The opium monopoly system of Manchukuo
 22 was based upon what was called a gradual prohibition
 23

24	<u>HO-22.</u>	b. T. 20,466	<u>HO-23.</u>	a. T. 20,309
		c. T. 4,685		b. Ex. 2463,
25		d. T. 4,685-6		T. 20,353
		e. Ex. 2475; T. 20,466.		c. Ex. 2462,
				T. 20,310

1 policy, and was established after the Formosan system
2 which had won national recognition.^a In view of the
3 spirit of the Geneva Opium Agreement of 1925^b and in
4 accordance with the Report of the Far Eastern Opium
5 Commission of the League of Nations,^c such a policy
6 of gradual suppression under Government monopoly was
7 considered best to be adopted under the opium condi-
8 tions in Manchukuo and its surrounding districts.^d

9 2. It is a fact that the Government obtained
10 some revenue from the opium monopoly, particularly
11 in its early period, but the final aim thereof
12 was the eradication of the evil of opium.^e The
13 said Commission of the League of Nations admits the
14 fact that many countries in the Far East depended upon
15 the revenue from the opium monopoly and only recommended
16 that every expense connected with opium should be
17 charged against the gross revenue, the net revenue
18 should be first applied to cover the expenses connected
19 with the campaign against illicit traffic, for education,
20 cure of addicts, etc., and the balance, if any, should
21 be used for sanitary, social and other purposes.^f

- 23 HO-24. a. Ex. 2448; 2449; T. 20,254, 20,258
24 b. Ex. 2446; T. 20,247
25 c. Ex. 2447-A; T. 20,252
d. Ex. 2450; T. 20269; Ex. 2462; T. 20,313
e. Ex. 2467-C; T. 20,408
f. Ex. 2453; T. 20,277-8

1 Exhibit 2460-A,^g which is the Manchukuo Government
2 Report on Opium Special Account for 1943, is clear
3 evidence showing that Manchukuo treated the revenue
4 from the opium monopoly strictly in line with this
5 recommendation.

6 3. Soon after HOSHINO became Chief of the General
7 Affairs Board in 1936, he took steps to combat the
8 opium evil, as that was the time to commence the
9 period of stringent control.^h Despite the strong
10 criticisms and widely held belief that opium smoking
11 could not be eliminated in less than 20 years, HOSHINO
12 advocated a 10-year opium elimination policy which was
13 supported by young, native Manchurian officials. He
14 contributed much toward the adoption of the latter
15 policy based upon the program prepared by Yung Chan-Chi,
16 native Manchurian official.^j He opposed the use of
17 opium monopoly revenues for general government
18 expenditures and insisted that prohibition should be
19 carried out without stinting the expense.^k It is
20 submitted that all the evidence relating to this sub-
21 ject has demonstrated the fact that Manchukuo opium
22 policy was a success not only in reducing the number
23

24 HO-24. g. T. 20,305
25 h. Ex. 3211; T. 29,116; Ex. 2465, T. 20373
i. Tr. 29,117-8
j. Tr. 29,120
k. Tr. 29,119

1 of addicts but in eradicating this evil from the home
 2 and social life of the people. The number of registered
 3 addicts, reaching its peak of 590,000 or thereabouts
 4 in 1937^l, went down gradually to something over
 5 200,000^m in 1945.

6 4. Concerning the statement of witness NAMBA,
 7 we suggest there are very few inconsistencies between
 8 the affidavitⁿ he made for the prosecution and the
 9 one he made for the defense^o and particularly on the
 10 details of the opium policies both are entirely consist-
 11 ent.^p As the dates of the affidavits show, the prose-
 12 cution took their's in July 1946, nine months before
 13 that of the defense, but they did not use it in their
 14 case. As to the figures of the net profit from the
 15 opium monopoly, the main issue, we submit, turns upon
 16 the question as to whether or not the maximum thereof
 17 amounted to 30,000,000 yen.^q
 18
 19
 20
 21
 22

23 HO-24. l. Ex. 2462; T. 20,330
 24 m. Ex. 3211; T. 29,121; Ex. 3154; T. 28,059
 25 n. Ex. 2463
 o. Ex. 2462
 p. Ex. 2463, p. 1-5
 q. T. 20,349

On this point NAMBA reiterated that the
 1 figures were inaccurate since they were based upon his
 2 recollection after ten years, and that around 20 mil-
 3 lion yen would be perhaps the more accurate figure.^r

4 In view of the corroborating testimony of
 5 prosecution witness TANAKA,^s we suggest that the
 6 Tribunal accept the 20 million yen figure as accurate
 7 so far as the maximum of the net profit was concerned.
 8 Much of the prosecution's evidence on this subject,
 9 related to the period from 1932-38 in which the
 10 registration of the addicts was increasing, and, there-
 11 fore, it cannot be acceptable as showing anything for
 12 the period thereafter when the good effect of the
 13 monopoly system gradually was realized. Evidence
 14 disclosed that in 1943 the net profit from the opium
 15 amounted to only one percent of the total state
 16 revenue.^t
 17

18 HO-25. In reference to the decoration
 19 HOSHINO received in April 1940, he was one among 3
 20 million odd people who were decorated on the same
 21 occasion.^a

22 HO-24. r. Tr. 20,350; 20,356

23 s. Tr. 15,858.

t. Ex. 2461-A, Tr. 20,322

24 HO-25. a. Ex. 3147, Tr. 28,032

25

HO-26. In our submission, all the evidence
1 relating to this period has also demonstrated the fact
2 that HOSHINO as Chief of the General Affairs Board
3 faithfully discharged his duties strictly within
4 their limits and for the benefit and welfare of
5 Manchukuo and its people. The prosecution did not
6 challenge the evidence of his good work to improve
7 Manchukuo, although they had ample opportunity to do
8 so since a great deal of it was introduced. In spite
9 of much evidence cited by the prosecution in their
10 summation, only a little is considered really to have
11 some direct bearing upon HOSHINO, and this little con-
12 sists mainly of Pu-Yi's testimony and the United States
13 Strategic Bombing Survey Interrogations. Both of the
14 above sources of evidence were relied upon by the
15 prosecution in their attempt to connect up HOSHINO
16 with the charge of domination and exploitation. The
17 former was referred to in pages GG-13 to 14, while
18 the latter in pages GG-3, 8 and 10. Pu-Yi is now a
19 thoroughly discredited witness, and especially his
20 testimony on the details of the Manchukuo administra-
21 tion is, we submit, full of inconsistencies and mis-
22 information in the light of all the evidence. To
23 cite one of the many such instances, he stated that
24 the Manchurians were not allowed to borrow money from
25

1 the banks.^a But, the prosecution exhibit 445 shows
2 that the Manchukuo Government laid various plans to
3 assist the monetary activities of its people by re-
4 ducing the rate of interest.^b Exhibit 2471-A further
5 shows that the district cooperative banking societies
6 under the supervision of the Finance Ministry made
7 about 5,600,000 yen loans to farmers within a few
8 years of their establishment.^c

9 As to the use of the United States Strategic
10 Bombing Survey Interrogation which is recorded in
11 transcript pages 5,152 to 5,180, we submit that it
12 is both unreliable and unfair for the purpose of this
13 Tribunal, and it should, therefore, be disregarded.

14 We do not think it necessary to refer here
15 to the testimony of the witnesses^d or to the argument
16 which we fully set forth relating to this subject.^e

17 In our submission, the prosecution's attempt
18 to prove beyond a reasonable doubt the charges of
19 domination, economic exploitation and aggression
20 against HOSHINO cannot succeed at all in the face of
21 the overwhelming evidence to the contrary.
22

23 HO-26. a. Tr. 4,022
24 b. Tr. 20,454
25 c. Tr. 20,415
d. Ex 3207, Tr. 29,072; Ex. 3203, Tr. 29,086.
e. Tr. 29,096-7

1 B. PLANNING BOARD PERIOD, FROM July 22, 1940 to
2 April 4, 1941.

3 HO-27. On receiving unexpectedly a telegram
4 from Prince KONOYE, HOSHINO left Manchukuo July 17,
5 1940, arriving in Tokyo on the 20th of the same month.
6 When he called on KONOYE the next day upon his request,
7 HOSHINO was asked to be the President of the Planning
8 Board in the Cabinet then under formation, and he
9 accepted it. It was on the 21st of April, a day be-
10 fore the Investiture of the Second KONOYE Cabinet.^a

11 HO-28. The prosecution makes various con-
12 jectures concerning his appointment (GG 22-25), but
13 in our submission it is altogether an unreasonable
14 inference and unsupported by a bit of the evidence.
15 ISHIWATA, who was a friend of both KONOYE and HOSHINO
16 and had been the Chief Secretary of the preceding
17 YONAI Cabinet, stated that soon after the resignation
18 of the YONAI Cabinet, he was called on the telephone
19 by KONOYE asking for his opinion whether HOSHINO
20 would fit for the post of the President of the Plan-
21 ning Board or not.^a This witness further stated that
22 he replied to KONOYE that HOSHINO would fit in view
23 of his experience in the administrative affairs.^b

24
25 HO-27. a. Ex. 3655, Tr. 36,179
HO-28. a. Tr. 29,103
b. Tr. 29,104

TOJO stated that in the "OGIKUBO Conference" held
1 before the formation of the KONOYE Cabinet, selection
2 of the Cabinet members was entirely left with KONOYE.^c

3 HO-29. As to the result of KONOYE's choice
4 nearly all the members of the Cabinet were found to
5 be new men.^a Among the twelve members, only Navy
6 Minister YOSHIDA, who was remaining in the same post
7 over from the YONAI Cabinet, and the Minister of
8 Home Affairs YASUI had held a ministerial position.
9 None of the others had ever held even a position of
10 vice-minister except TOJO and ISHIGURO, the Minister
11 of Agriculture and Forestry. However, concerning
12 HOSHINO himself, it was not an unusual promotion in
13 view of the facts that his contemporaries in the
14 Finance Ministry, like KAYA, ISHIWATA and AOKI, had
15 already held Cabinet appointments.
16

17 HO-30. In short, Prince KONOYE's scheme
18 seemed to be to pick up a new man of ability from
19 wider circles without paying any regard to his former
20 appointment. The prosecution tries to attach par-
21 ticular significance to the entering into this
22 Cabinet those who had been in Manchuria for some time.
23 However, in view of MATSUOKA's having been appointed
24

25 HO-23. c. Tr. 36,179
HO-29. a. Exhibit 3160

1 the Cabinet Councillor in the First KONOYE Cabinet
2 in 1937 and having remained in the same position for
3 a long period as his personal record ^a shows, it would
4 be a reasonable inference that KONOYE decided to have
5 him as Foreign Minister in his own discretion. Of
6 MATSUOKA's choice of OHASHI as the Vice-Minister of
7 Foreign Affairs, witness SAITO stated that it was
8 MATSUOKA's own personal decision. ^b

9 HO-31. At that time Japan was confronted
10 with a very difficult situation both inwardly and
11 outwardly. The China Incident had been in progress
12 for over three years and the World War II was continu-
13 ing to spread since its outbreak in September 1939.
14 KONOYE's appointment dropped HOSHINO into the midst
15 of this difficult situation in Japan which was in
16 no way brought on by him. To use words employed by
17 the learned Chief Prosecutor in his opening statement,
18 HOSHINO at this stage was "confronted by a condition,
19 not a theory."
20

21 HO-32. Before the formation of the Cabinet,
22 in the "OGIKUBO Conference" an agreement had been
23 reached already concerning national defense, diplomacy
24 and internal administration among KONOYE, TOJO,
25 YOSHIDA, and MATSUOKA, who later became four important

1 ministers of this Cabinet. ^a The essentials of this
 2 agreement formed the nucleus of what was later pre-
 3 sented as the outline of basic national policy. ^b
 4 Evidence discloses that this "Four Ministers' Con-
 5 ference" continued practically to decide upon the
 6 most important matters of policy. Diplomatic policy
 7 was left in the hands of Foreign Minister MATSUOKA,
 8 who was a man of great self-confidence and did
 9 everything by himself, rarely asking the advice of
 10 others. ^c

11 HO-33. As is shown by much evidence,
 12 KONOYE's main concern was to settle the China Inci-
 13 dent with an utmost effort, ^a and he believed that
 14 the friendly relations with America and Britain was
 15 extremely essential to the ultimate solution of the
 16 China Incident. ^b

17 HO-34. As President of the Planning Board
 18 HOSHINO was under the jurisdiction of the Premier. ^a
 19 The duty of the Planning Board, briefly stated, was
 20 to draft an economic plan ^b and make general arrange-
 21 ment of the various departments. ^c However, as the

22 HO-32. a. Ex. 3655, Tr. 36,178
 23 b. Tr. 36,179
 24 c. Ex. 3583, Tr. 34,958

HO-34.
 a. Ex. 71
 b. Tr. 5,131
 c. Tr. 5,148

25 HO-33. a. Ex. 3655, Tr. 36,178
 b. Tr. 36,186

1 prosecution witness Liebert admitted, the Board made
 2 plans only and submitted them to the Premier; the
 3 final decision was always made by the Cabinet and
 4 executed by the ministries concerned.^d The Board
 5 was, to the end, the Premier's staff and had no
 6 authority to give orders to the other government
 7 offices,^e and it could only request them to furnish
 8 data or explanation as might be necessary.^f

9 HO-35. Simultaneously with the appointment
 10 as the President of the Planning Board, HOSHINO was
 11 made a Minister of State without Portfolio. But he
 12 was not, of course, the head of an executive branch
 13 of the government. So far as the Privy Council Meet-
 14 ing was concerned, he could attend it in the capacity
 15 of an "explainer." An "explainer" was a person or-
 16 dered to attend the meeting to assist one of the
 17 regular members; he could not attend of his own
 18 right, could not vote and could only speak when called
 19 on to make an explanation by the President.^b The
 20 prosecution exhibit 1103^c clearly shows that HOSHINO

- 21 HO-34. d. Tr. 8,731
 22 e. Ex. 2802, Tr. 25,205.
 23 f. Ex. 71, page 2
 24 HO-35. a. Ex. 109
 25 b. Ex. 3213, Tr. 29,134-36; ex. 3220,
 Tr. 29,197.
 c. Ex. 1103

1 did not attend any of the Liaison Conferences held
2 within a period from January 1941 up to his resig-
3 nation in April.

4 THE PRESIDENT: We will adjourn until nine-
5 thirty tomorrow morning.

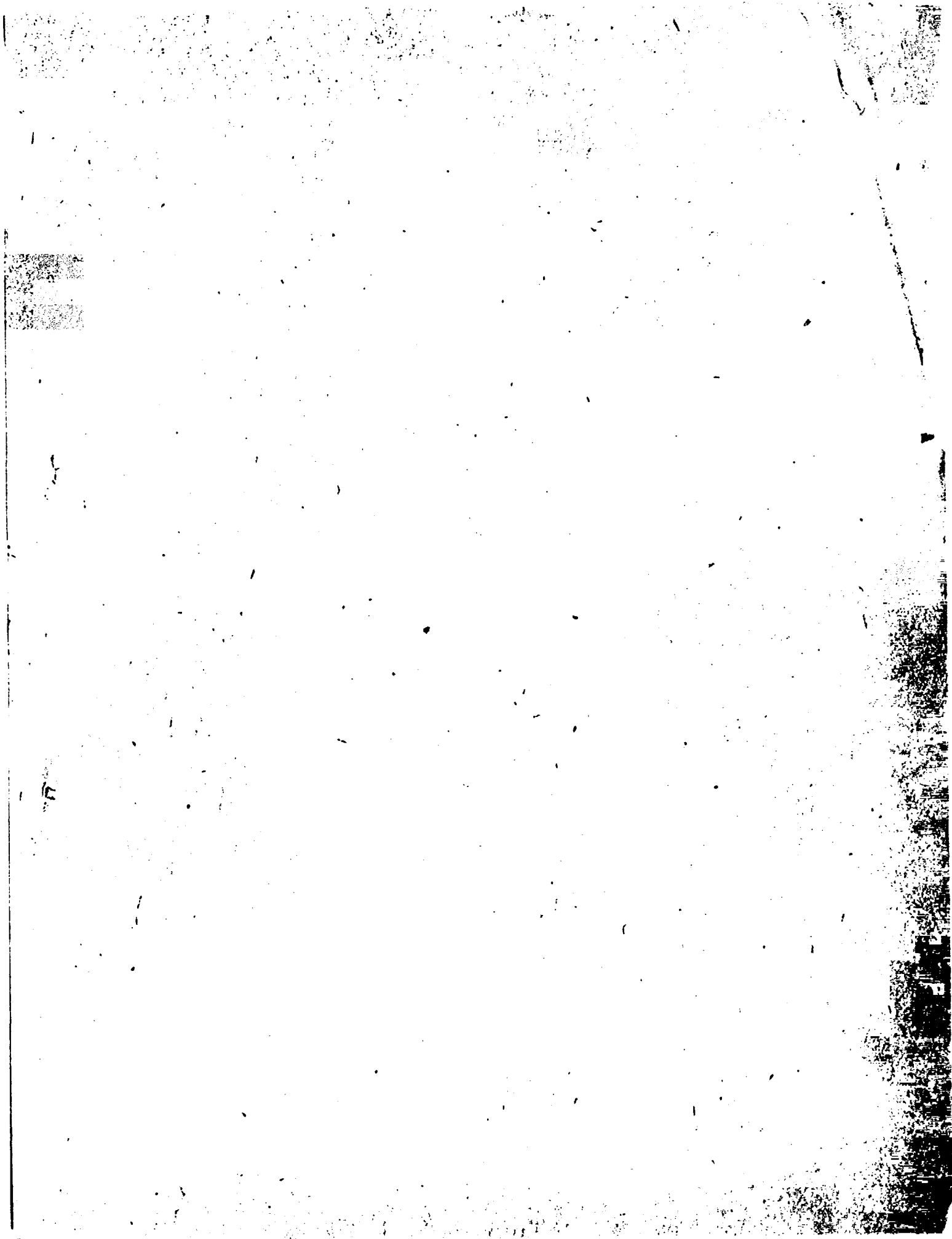
6 (Whereupon, at 1600, an adjourn-
7 ment was taken until Tuesday, 23 March,
8 1948 at 0930.)

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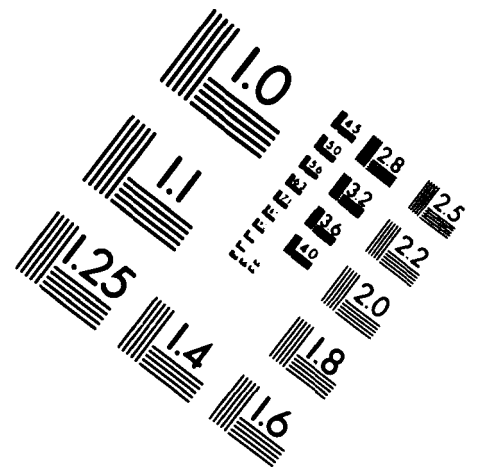
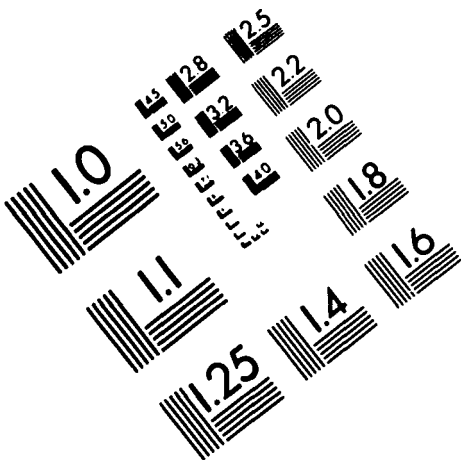
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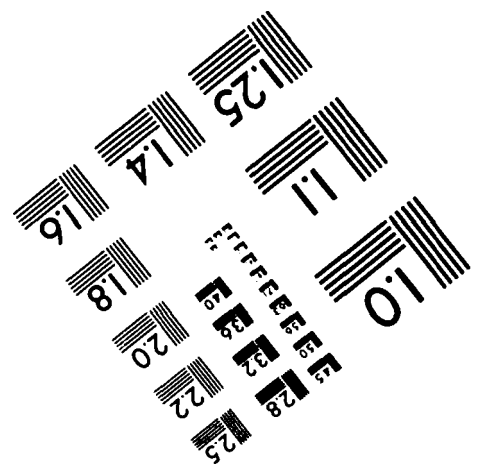
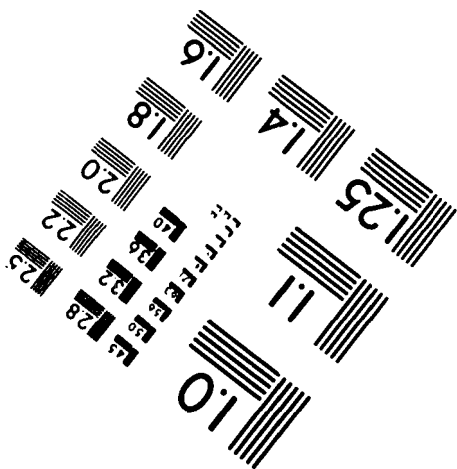
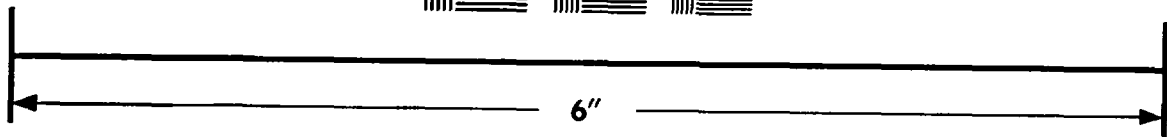
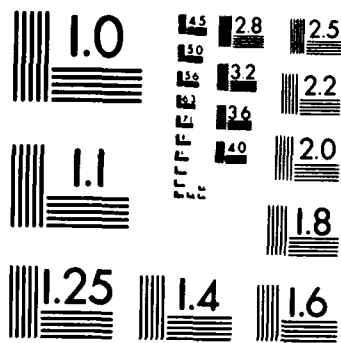
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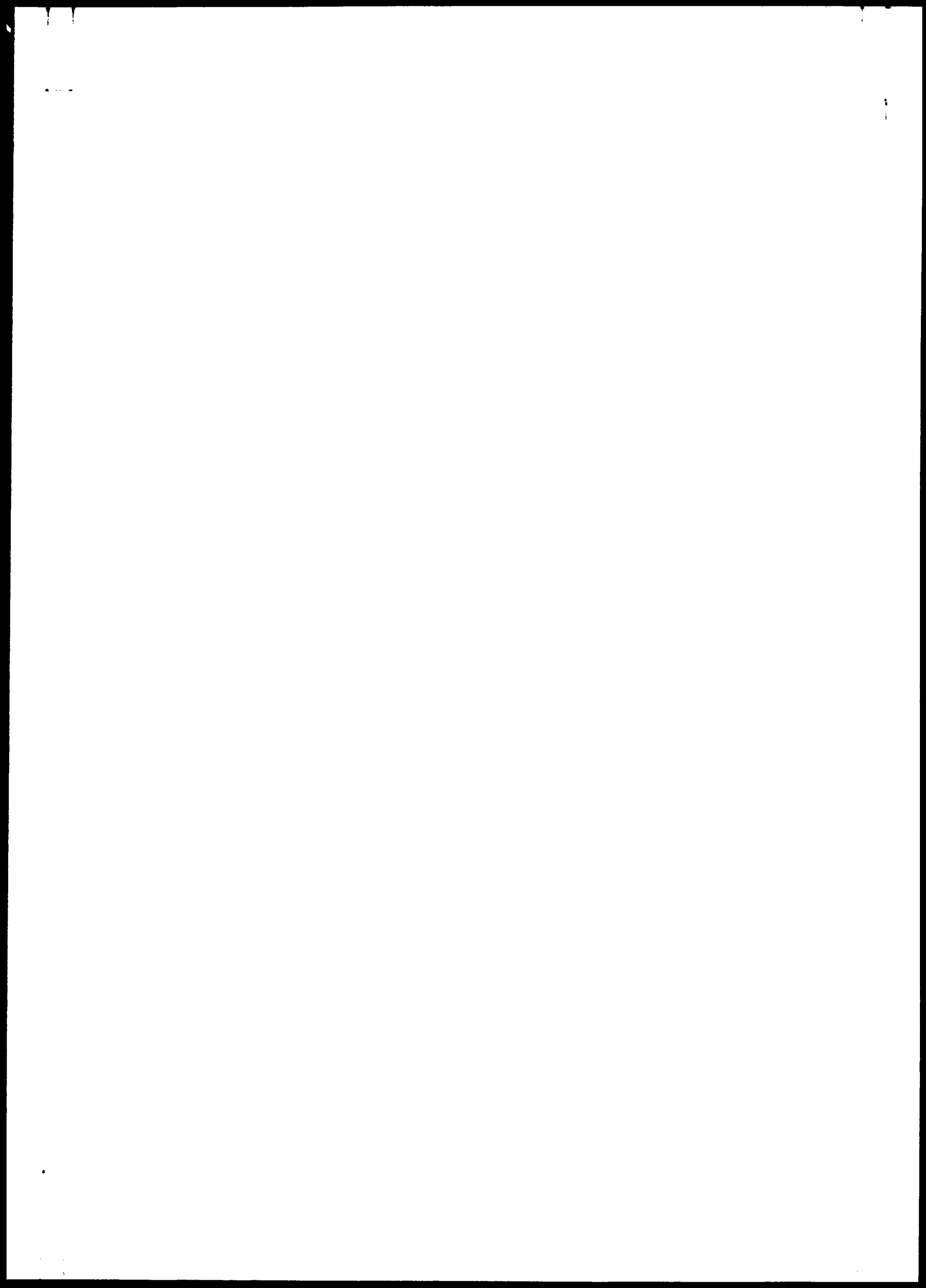
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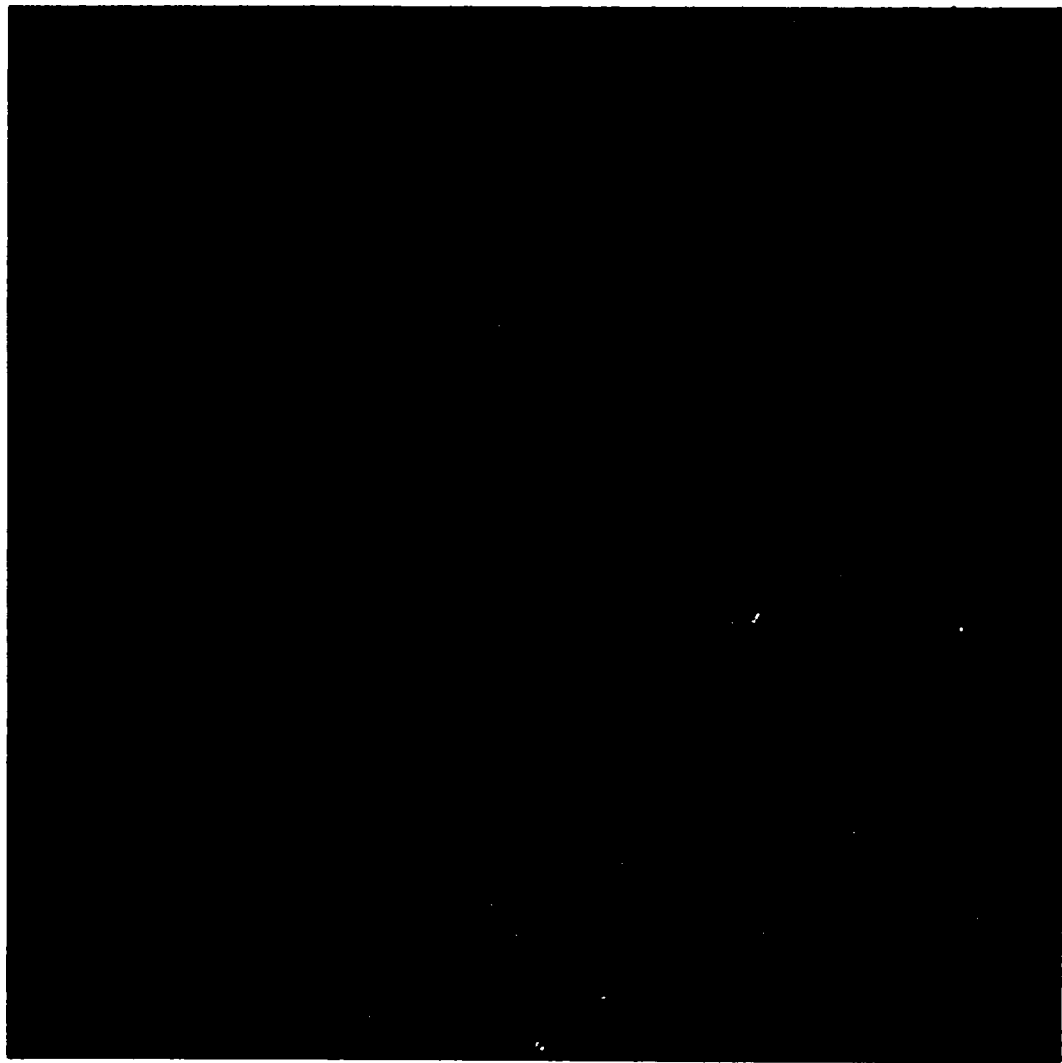


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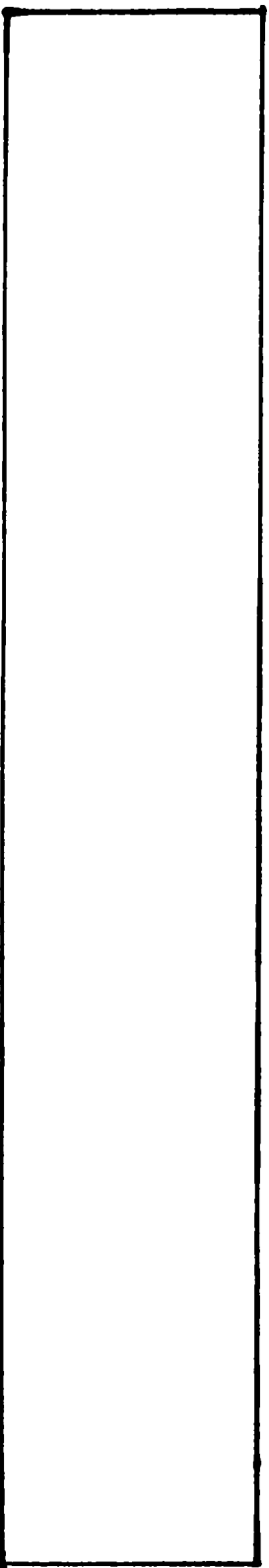


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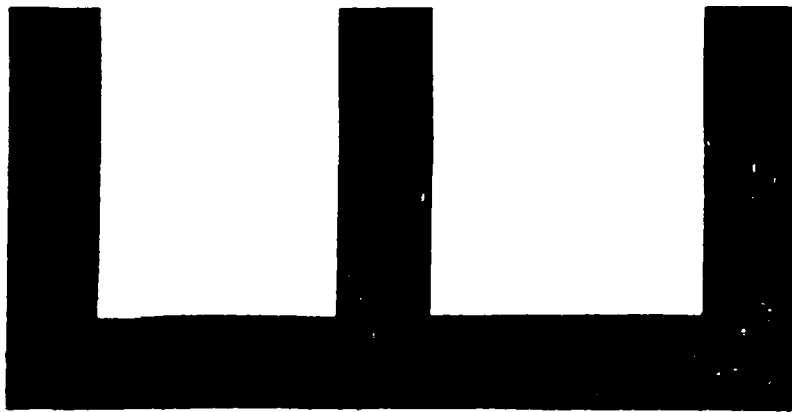
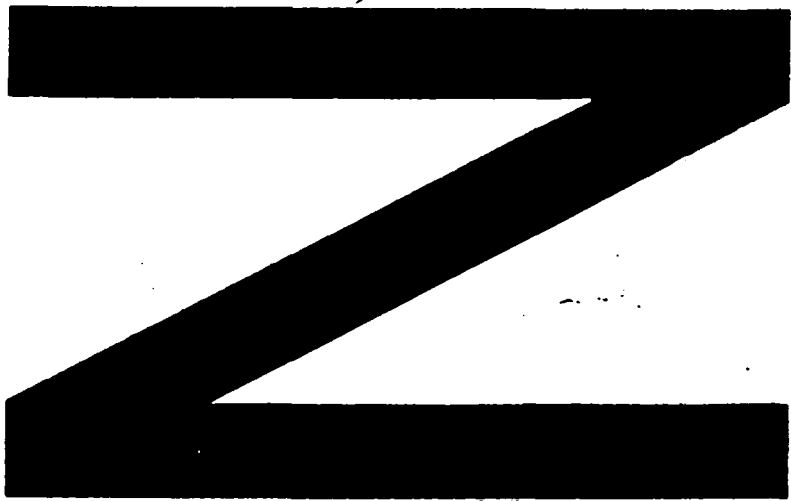
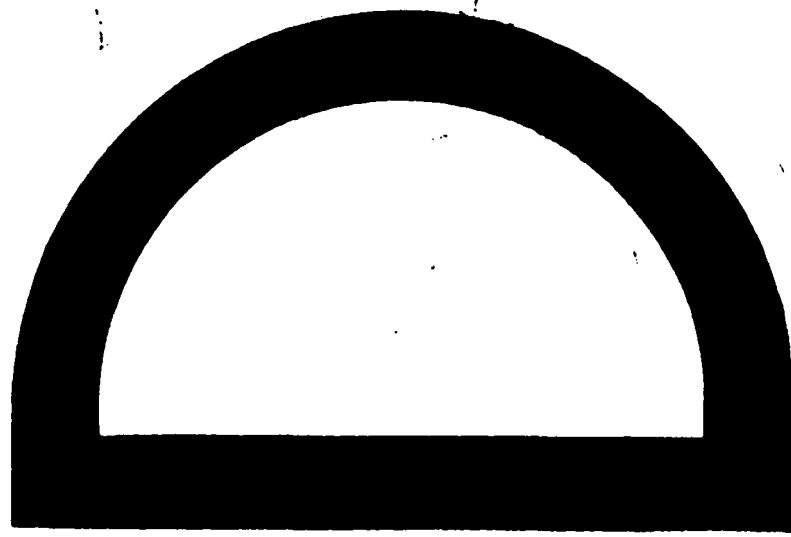
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